TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible].

No. 216. 19.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED MAY 7, 1904.

(19,328.)

(19,328.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 246.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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a 8416.

THE STATE OF OHIO, }
City of Columbus. }

Supreme Court of the State of Ohio.

To the honorable the Supreme Court of the United States:

Pursuant to the command of your within writ of error, directed to us, we, under our seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the judges within named, in a certain authenticated transcript to this writ attached, send, as within we are commanded.

Seal of the Supreme Court of the State of Ohio.

In witness whereof, I, Lawson E. Emerson, clerk of the supreme court of Ohio, have set my hand and seal of said court, this 25th day of April, A. D., 1904.

LAWSON E. EMERSON,
Clerk Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b *Petition for Writ of Error from Supreme Court of the United States to the Supreme Court of the State of Ohio.*

Supreme Court of Ohio.

WILLIAM MARVIN
against
BELLE B. TROUT. } Case No. 8416. Petition.

To the Honorable William T. Spear, chief justice of the supreme court of the State of Ohio:

Your petitioner William Marvin, respectfully shows:

That heretofore, to wit, on March 15th A. D. 1904 the supreme court of the State of Ohio affirmed the judgment herein of the circuit court of Hancock county, State of Ohio, which judgment of affirmance was a final order made by the highest court of the State of Ohio; and the highest court of the State of Ohio having jurisdiction of said case, and in which a decision could be had; and in which final order and judgment, and the proceedings had prior thereunto in this case in said circuit court of Hancock county, State of Ohio, certain errors were committed to the prejudice of said William Marvin, all which will more in detail appear from the assignment of errors which is filed with this petition.

Said Belle B. Trout brought suit under section forty two hundred and seventy three (4273) of the Revised Statutes of Ohio, as a third person and recovered a judgment at law therein against James Clifford and Jacob Gassman, who were tenants of William Marvin, for money alleged to have been bet by one Frank H. Trout and won by said James Clifford and Jacob Gassman from him.

Thereafter said Belle B. Trout brought this action as a suit in equity against said William Marvin to subject his real estate upon which said gambling is alleged to have occurred to the payment of her judgment so obtained against Clifford and Gassman upon the ground that said William Marvin as such owner of the real estate knowingly permitted said gambling to be done upon his said real estate, and it was therein claimed that such suit was authorized by section forty two hundred and seventy five (4275) of the Revised Satutes of Ohio; and thereupon said circuit court sitting as a court of equity, and in which no jury was provided or authorized by the constitution and laws of the State of Ohio, took jurisdic-

c tion of said case and tried the case as a court of equity and found and entered upon its journal a finding of facts to the effect that such real estate of said William Marvin was liable for the amount of said judgment so recovered by said Belle B. Trout against said James Clifford and Jacob Gassman, and for interest thereon, and for the costs of that suit, and for the costs of this suit against said William Marvin; and said circuit court rendered a judgment and decree upon their said finding of facts that said real estate of said William Marvin be sold by the sheriff of Hancock county, Ohio, to satisfy said judgment, interest and costs, and increase- costs, and that he pay to said Belle B. Trout out of the proceeds of sale the sum of five thousand and eighty-two dollars ($5082) besides interest and costs.

That said finding and judgment was affirmed by said supreme court of Ohio as aforesaid; and a special mandate was sent from that court to the court of common pleas of said Hancock county, to carry said judgment into execution; and an order of sale is now in the hands of the sheriff of Hancock county commanding him to appraise, advertise and sell said real estate of William Marvin, to satisfy said finding, judgment and decree.

Your petitioner further shows that a Federal question was made in the thirteenth paragraph of his petition in error in said supreme court of the State of Ohio, namely:

d First. Whether the said section forty two hundred and seventy three (4273) of the Revised Statutes of the State of Ohio which authorizes any person to bring suit to recover money lost at gaming is repugnant to the Constitution of the United States, or the amendments thereto.

Second. Whether the said section forty two hundred and seventy five (4275) of the Revised Statutes of the State of Ohio which authorizes and fixes liability against the building owned by parties

other than the gamblers is repugnant to the Constitution of the United States, or the amendments thereto.

Third. Whether in the enforcement of said sections forty two hundred and seventy three (4273), and forty two hundred and seventy five (4275), or either of them as against said William Marvin, and the construction put upon the same by said circuit court of Hancock county, Ohio, and by the said judgment of affirmance by the supreme court of Ohio, said William Marvin has been deprived of any substantial right guaranteed to him by the Constitution of the United States, and the amendments thereto.

Fourth. Whether a judgment lien had against gamblers for a gambling debt can be asserted in a court of equity against the owner of the building in which the gambling is alleged to have been done, and to which judgment such owner is neither a party or privy, and thereby deprive him of his common law right to a jury trial upon each and all the issues joined, without violating the Constitution of the United States, or the amendments thereto.

Fifth. Whether a judgment against said William Marvin in a court of law wherein he had a right to have the judgment of the jury as to his liability under said sections of the statutes of Ohio, is necessary before the powers of a court of equity of the State of Ohio can be invoked to either create or enforce the alleged gambling debt against his said real estate.

Sixth. Whether said statutes or the said proceedings of said courts of the State of Ohio violate in effect and results section one (1) of article fourteen (14) of the amendments to the Constitution of the United States.

Petitioner further shows that a Federal question was made in said case, to wit, as hereinbefore set out, and that said judgment of said supreme court of Ohio was repugnant to the Constitution of the United States, and repugnant to the amendments thereto; and that a decision of said Federal question was necessary to the judgment rendered.

Your petitioner files herewith his assignment of errors.

Wherefore your petitioner presents herewith an exemplified transcript of the record of the supreme court of Ohio in said case and prays that a writ of error to said supreme court of Ohio be allowed; that citation be granted and signed; that the bond herewith presented be approved, and that upon compliance with the terms of the statute in such cases made and provided said bond and writ of error may operate—a supersedeas, that the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment aforesaid of said supreme court of Ohio be reversed, and the said William Marvin held harmless as to his said real estate in said case.

WILLIAM MARVIN, *Petitioner*,
By GEO. F. PENDLETON,
ALFRED GRABER,
His Attorneys.

The writ of error as prayed for in the foregoing petition is hereby allowed this 12th day of April A. D. 1904, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of $6,000.00.

Dated at Columbus, Ohio this 12th day of April A. D. 1904.

WILLIAM T. SPEAR,
Chief Justice of the Supreme Court of Ohio.

f [Endorsed:] 8416. William Marvin against Belle B. Trout. Petition for writ of error from Supreme Court of United States. Filed Apr. 12 1904 Supreme court of Ohio. L. E. Emerson, clerk. Geo. F. Pendleton, Alfred Graber and Geo. H. Phelps att'ys for William Marvin.

g *Assignment of Errors on Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Ohio.*

Supreme Court of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } Case 8416.

Now comes the said William Marvin, plaintiff in error, and for an assignment of errors herein says: That at the December term A. D. 1902, to wit, on January 26, A. D. 1903 of the circuit court of Hancock county, State of Ohio, in a certain case therein pending in which he was defendant, and said Belle B. Trout was plaintiff, a judgment decree and order upon a finding of facts made by said circuit court were entered in favor of said Belle B. Trout, and against him, the said Marvin for $5082 besides interest and costs, and an order was made directing the sheriff of Hancock county Ohio to sell twenty nine and a half feet off of the south side of lot numbered 86 in the city of Findlay, said county, and out of the proceeds to pay said Belle B. Trout said sum of $5082, and interest and costs, if default should be made by said Marvin to pay said amount.

Said Belle B. Trout had before that time in an action at law by the verdict of the jury and judgment of the court of common pleas of said county recovered against James Clifford and Jacob Gassman, tenants of said Marvin occupying said real estate for money alleged by her to have been lost by one Frank H. Trout at gaming with said James Clifford and Jacob Gassman. Her petition was based upon section 4273 of the Revised Statutes of Ohio, and her recovery had against them to her use was for the money alleged to have been lost by said Frank H. Trout and won by said Clifford and Gassman.

She thereupon brought this action as a suit in equity against said William Marvin to subject his said real estate upon which she alleged

said gambling was done to the payment of her said judgment against Clifford and Gassman, alleging in substance that said William Marvin knowingly permitted said parties to gamble upon his said real estate and in certain rooms in the building on the same, founding her said equitable action upon section 4275 of the Revised Statutes of Ohio; and said circuit court sitting as a court of equity, and in which no jury was provided by law, took jurisdiction of said case and at the trial thereof made and entered upon its journal a
h finding of facts to the effect that said real estate as the property of said Marvin was liable for said judgment so had against said Clifford and Gassman, and thereupon said circuit court entered said judgment decree and order in favor of said Belle B. Trout and against said Marvin; all which will more fully appear by the record filed herewith.

Plaintiff in error further says that at the January term of the supreme court of the State of Ohio, to wit, on March 15th A. D. 1904 said cause was heard by said supreme court of Ohio upon the petition in error of said William Marvin, which raised for decision all the errors hereinafter set forth, and thereupon said supreme court of Ohio, which is the highest court of law and equity in said State in which a decision of said case can be had affirmed said finding judgment decree and order so made and entered in said circuit court, and remanded said case to the court of common pleas of said Hancock county for execution; all which will more fully appear by an authenticated transcript of the record in said case filed herewith.

Said William Marvin further says: That in the said proceedings, and the rendering said judgment decree and order, error intervened to his prejudice, as will appear by said record; and that among errors so intervening are the following:

1. The said findings judgment and order of said circuit court of Ohio, and said judgment of affirmance of the supreme court of the State of Ohio violate in effect and results and are repugnant to section one of article fourteen of the amendments to the Constitution of the United States.

2. That said supreme court of Ohio erred in not giving to said William Marvin as full and adequate protection under the Constitution of the United States and amendments thereto as would have been secured to him if said case had been tried in the courts of the United States; he being a citizen of the United States.

3. That said sections 4273 and 4275 as the foundation of said suit and said findings judgment and order, and said judgment of affirmance if enforced against said William Marvin and his said property amount to an attainder and forfeiture, even beyond his own lifetime, which is prohibited by article one section nine, and by article one section ten of the Constitution of the United States.

i 4. That the said findings judgment decree and order amount to a forfeiture and confiscation of his said real estate, and cut off his title in fee, contrary to section three of article three of the Constitution of the United States.

5. That the said sections 4273 and 4275 of the Statutes of Ohio, upon which this suit is based as construed and enforced by said circuit and supreme court of Ohio against said William Marvin contravene the fifth, sixth, seventh, eighth, ninth and fourteenth amendments to the Constitution of the United States.

6. The said William Marvin is a citizen of the United States and as such is entitled to the equal protection of the laws, and to the possession and enjoyment of his said real estate unless taken for some tax or assessment or other public charge, and the taking of the same for the benefit of said Belle B. Trout, who lost nothing by said alleged gaming is an unwarranted exercise of the police power of the State of Ohio, by the machinery of its said statutes and decisions and is a violation of the spirit of the United States Constitution and the amendments thereto.

7. The said sections forty two hundred and seventy three (4273), and forty two hundred and seventy five (4275) of the Revised Statutes of Ohio, upon which this suit is based, and without which it could not be maintained, are against natural justice, and are an invasion of the private right of property, and in so far as they authorize the taking of said real estate of said William Marvin to satisfy a judgment at law against his tenants James Clifford and Jacob Gassman, who had possession under a valid lease from said William Marvin for lawful purposes, and in favor of said Belle B. Trout who lost no money by said gaming, and had no personal claim against said William Marvin, the said sections are unconstitutional and void. They violate divers portions and provisions of the Constitution of the United States, and of the amendments.

j 8. Other errors are apparent on the record.

Wherefore said plaintiff in error prays that said judgment against him may be reversed, annulled and altogether held for naught, that his said real estate may be relieved from the lien of the same, and that he be restored to all things he has lost by said judgment and proceedings against him.

GEO. F. PENDLETON,
ALFRED GRABER,
Attorneys for Plaintiff in Error.

k [Endorsed:] 8416 William Marvin *vs.* Belle B. Trout Assignments of errors in Supreme Court of United States Filed Apr. 12 1904 Supreme court of Ohio. L. E. Emerson, clerk. Geo. F. Pendleton, Alfred Graber & Geo. H. Phelps att'ys for Wm. Marvin

l *Order Allowing Writ of Error from Supreme Court of the United States to the Supreme Court of the State of Ohio.*

Supreme Court of the State of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } No. 8416.

The above entitled matter coming on to be heard upon the petition of the said William Marvin, plaintiff in error therein for a writ of error from the Supreme Court of the United States to the supreme court of the State of Ohio, and upon examination of said petition and the record in said matter, and desiring to give the petitioner, William Marvin, an opportunity to present to the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be, and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

WILLIAM T. SPEAR,
Chief Justice of the Supreme Court of the State of Ohio.

[Endorsed:] 8416 William Marvin *vs.* Belle B. Trout. Order allowing writ of error from Supreme Court of the United States to the supreme court of Ohio. Filed Apr. 12 1904 Supreme court of Ohio. L. E. Emerson, clerk.

m *Bond on Writ of Error from Supreme Court of the United States to the Supreme Court of the State of Ohio.*

Supreme Court of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } Case 8416. (Bond Executed in Duplicate.)

Know all men by these presents that we, William Marvin as principal and John A. Scott, R. W. Moore and David T. Davis as sureties, are held and firmly bound unto Belle B. Trout in the sum of six thousand dollars ($6,000) to be paid to the said obligee, her representatives, and assigns; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 11th day of April A. D. 1904.

Whereas the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the supreme court of the State of Ohio.

Now, therefore the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

WM. MARVIN. [SEAL.]
JNO. A. SCOTT. [SEAL.]
R. W. MOORE.
D. T. DAVIS. [SEAL.]

I hereby approve the foregoing bond and sureties this 12th day of April A. D. 1904.

WILLIAM T. SPEAR,
Chief Justice of the Supreme Court of the State of Ohio.

I hereby certify that the foregoing signers of the said bond are good for the amount named in the bond.

[Seal Common Pleas Court of the County of Hancock, Ohio.]

P. W. EWING,
Clerk of Courts of Hancock County, Ohio.

[Endorsed:] 8416. William Marvin *vs.* Belle B. Trout. Bond, $6,000. On writ of error from Supreme Court of United States to supreme court of State of Ohio. Filed Apr. 12 1904 Supreme court of Ohio. L. E. Emerson, clerk.

n *Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Ohio.*

THE UNITED STATES OF AMERICA, *ss:*

To the honorable judges of the supreme court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Ohio, before you or some of you, being the highest court of law or equi y in the said State in which a decision could be had in said suit between William Marvin, plaintiff in error, and Belle B. Trout, defendant in error, being case number 8416 in the supreme court of Ohio, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and

the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State on the ground of their being repugnant to the Constitution, amendments, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or amendments, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, amendment, treaty, statute or commission, a manifest error hath happened, to the great damage of said plaintiff in error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 18 day of May A. D. 1904, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

o Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 16th day of April in the year of our Lord A. D. 1904.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD,
Clerk of the Circuit Court of the United States
for the Northern District of Ohio,
By B. C. MILLER, *Deputy Clerk.*

Allowed by

WILLIAM T. SPEAR,
Chief Justice of the State of Ohio.

p [Endorsed:] 8416. William Marvin *vs.* Belle B. Trout. Writ of error from Supreme Court of the United States to supreme court of Ohio. Filed April 18 1904 Supreme court of Ohio. L. E. Emerson, clerk.

q *Citation on Writ of Error from Supreme Court of the United States to the Supreme Court of the State of Ohio.*

Supreme Court of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error.
} Case 8416. Citation on Writ of Error.

UNITED STATES OF AMERICA, *ss:*

To Belle B. Trout, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein William Marvin is plaintiff in error and you are the defendant in error, it being case number 8416 in the supreme court of Ohio to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William T. Spear, chief justice of the State of Ohio, this 18th day of April, A. D. 1904.

WILLIAM T. SPEAR,
Chief Justice of the State of Ohio.

[Endorsed:] 8416 William Marvin *vs.* Belle B. Trout Citation to defendant On writ of error from the Supreme Court of the United States to supreme court of State of Ohio. Filed Apr. 18, 1904 Supreme court of Ohio. L. E. Emerson, clerk.

r *Return of Service of Citation and of Writ of Error.*

Supreme Court of the United States to the Supreme Court of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error.
} Case 8416. Supreme Court of Ohio.

Return on citation. Affidavit. (Attached to original citation.)

UNITED STATES OF AMERICA, *ss:*

THE STATE OF OHIO,
Hancock County,
} *ss:*

On this 21st day of April in the year of our Lord one thousand nine hundred and four, personally appeared before me the clerk of

the circuit court of Hancock county, State of Ohio, Ira Bushong, sheriff of said Hancock county, and makes oath that he delivered to said Belle B. Trout, defendant in error, a true copy of the original writ of error in this case duly certified as such by the clerk of the supreme court of Ohio; and also that he at the same time delivered to her a true copy of the within original citation in this case duly certified as such by the clerk of the supreme court of Ohio, said copy of the writ of error, and said copy of the within citation being under the seal of the supreme court of Ohio, and both of said copies were delivered to her personally this 21st day of April, A. D. 1904.

IRA BUSHONG,
Sheriff of Hancock County, Ohio.

Sworn to and subscribed before me, at the city of Findlay, this 21st day of April, A. D. 1904.

[Seal of the Circuit Court of Ohio, Hancock County.]

P. W. EWING,
Clerk of the Circuit Court of Hancock County, Ohio.

[Endorsed:] 8416. William Marvin *vs.* Belle B. Trout. Sworn return of service of exemplified copies of writ of error, and of citation. From the Supreme Court of the United States to supreme court of Ohio. Filed Apr. 22, 1904. Supreme court of Ohio. L. E. Emerson, clerk. Geo. F. Pendleton, att'y, Findlay, Ohio.

8 WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } Case 8416.

On this 22 day of April A. D. 1904 this case was further heard upon the application of plaintiff in error by Geo. F. Pendleton, his attorney, for an order from this court to the court of common pleas of Hancock county, Ohio, to recall and retire the order of sale lately issued by the clerk of the court of common pleas of said county, and now in the hands of the sheriff of said county. Upon consideration whereof, and it appearing that on the twelfth day of this month a writ of error was duly allowed by the Hon. William T. Spear, chief justice of the supreme court of Ohio from the Supreme Court of the United States to the supreme court of Ohio, in this case, and a supersedeas bond in the sum of six thousand dollars was approved by him and filed, and that on the sixteenth day of this month a writ of error in this case was issued and signed by the clerk of the circuit court of the United States for the northern district of Ohio returnable on May eighteenth A. D. 1904 to the Supreme Court of the United States, and that a citation was issued thereon signed by said chief justice of Ohio, and it further appearing that an exemplified copy of said writ has been deposited in the office of the clerk of this court for the use of said Belle B. Trout, defendant in error herein, and

that the same together with an exemplified copy of said citation under the seal of this court was on April 21st A. D. 1904 served upon her personally by the sheriff of said Hancock county, who has made return thereof to this court; it is therefore ordered that said supersedeas so allowed be made effectual to abide the issue made upon said writ of error in the Supreme Court of the United States, and that the clerk of the court of common pleas of said Hancock county recall the said order of sale, and that no further execution be issued in the case until the further order of the court herein.

It is further ordered that a copy of this entry be certified to said court of common pleas.

[Endorsed:] 8416. William Marvin *vs.* Belle B. Trout. (Entry—For supreme court of Ohio) Supersedeas order recalling execution. See Ohio Stat. § 442, 443; U. S. Stat. § 1007. 2 Loveland Forms. p. 1623 notes. Geo. F. Pendleton, attorney for plaintiff in error.

t *Certified Transcript of Docket and Journal Entries.*

THE STATE OF OHIO, *City of Columbus,* } *ss:*

In the Supreme Court of Ohio, January Term, A. D. 1904.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

WILLIAM MARVIN, Plaintiff in Error, *vs.* BELLE B. TROUT, Defendant in Error. } No. 8416. Error to the Circuit Court of Hancock County.

April 27, 1903. Petition in error, waiver, circuit court transcript, original papers and bill of exceptions filed.
" " " Papers sent Toledo Legal News Co., Toledo, O.
June 18, " " returned.
" " Printed record and proof of service filed.
July 9, " Pl'ff's printed brief filed. 9-24-03, Proof of service filed.
Sept. 25, " Plaintiff's printed brief filed.
Nov. 9, " Defendant's printed brief & proof of service filed.
" 11, " Proof of service of defendant's printed brief filed.
Dec. 26, " Plaintiff's printed reply and proof of service filed.
Mar. 15, 1904. Journal entry:
This cause came on to be heard upon the transcript of the record of the circuit court of Hancock county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this

court that the judgment of the said circuit court be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein.

It is further ordered that the defendant in error recover from the plaintiff in error her costs herein expended, taxed at $—.

Ordered, that a special mandate be sent the court of common pleas of Hancock county, to carry this judgment into execution.

Ordered, that a copy of this entry be certified to the clerk of the circuit court of Hancock county, "for entry."

Journal No. 19, page 414.

Mar. 22, 1904. Mandate issued.
" " " Original papers sent clerk.
Apr. 12, " Entry of certification filed.
" " " Journal entry:

Whereupon, on motion of said plaintiff in error, William Marvin, the court order it to be certified and made part of the record of this case and of the judgment of affirmance heretofore entered herein, that this action is founded upon sections forty-two hundred and seventy-three (4273) and
" forty two hundred and seventy-five (4275) of the Revised Statutes of Ohio on the subject of gaming.

It is further certified that said plaintiff in error set up in his petition in error, asking the reversal of the judgment of the circuit court of Hancock county, Ohio; that said sections of said statutes and the proceedings of said circuit court had thereunder were repugnant to section one, article fourteen of the amendments to the Constitution of the United States, and repugnant to article one, section nine, and article one, section ten, and section three of article three of said United States Constitution. Also that said sections of said statutes and the proceedings had thereunder were claimed and set up by plaintiff in error to be an invasion of his private right of property in violation of the spirit of said Constitution and amendments. That said judgment of affirmance was in favor of the validity of said statutes and of said proceedings had thereunder, and that they were not repugnant to any of the provisiens of said Constitution or of the amendments thereto.

It is further certified that this court is the highest court of law or equity in the State of Ohio in which a decision can be had in this case.

Journal No. 19, page 458.

Apr. 18, 1904. Copy of entry of certification sent clerk of courts.
" 12, " Petition for writ of error filed.
" " " Assignment of errors filed.
" " " Bond in duplicate filed. (Bond, $6000.00.)
" " " Order allowing writ of error filed.
" 18, " Writ of error filed.
" " " Citation on writ of error filed.
" 19, " Citation issued to sheriff of Hancock county, to be served upon Belle B. Trout.
" 22, " Sworn return of service of writ of error and citation returned by sheriff of Hancock county.

Apr. 22, 1904. Journal entry:

On this 22 day of April, A. D., 1904, this case was further heard upon the application of plaintiff in error by Geo. F. Pendleton, his attorney, for an order from this court to the court of common pleas of Hancock county, Ohio, to recall and retire the order of sale lately issued by the clerk of the court of common pleas of said county, and now in the hands of the sheriff of said county. Upon consideration whereof, and it appearing that on the twelfth day of this month a writ of error was duly allowed by the Hon. William T. Spear, chief justice of the supreme court of Ohio from the Supreme Court of the United States to the supreme court of Ohio, in this case, and a supersedeas bond in the sum of six thousand dollars was approved by him and filed, and that on the sixteenth day of this month a writ of error in this case was issued and signed by the clerk of the circuit court of the United States for the northern district of Ohio, returnable on May eighteenth, A. D., 1904, to the Supreme Court of the United States, and that a citation was issued thereon signed by said chief justice of Ohio, and it further appearing that an exemplified copy of said writ has been deposited in the office of the clerk of this court for the use of said Belle B. Trout, defendant in error herein, and that the same, together with an exemplified copy of said citation under the seal of this court was on April 21st, A. D., 1904, served upon her personally by the sheriff of said Hancock county, who has made return

thereof to this court; it is therefore, ordered that said supersedeas so allowed be made effectual to abide the issue made upon said writ of error in the Supreme Court of the United States, and that the clerk of the court of common pleas of said Hancock county recall the said order of sale, and that no further execution be issued in the case until the further order of the court herein.

v It is further ordered that a copy of this entry be certified to said court of common pleas.

Journal No. 19, page 466.

Apr. 23, 1904. Copy of entry allowing supersedeas bond sent clerk of courts of Hancock county.

w Supreme Court of the State of Ohio.

STATE OF OHIO, }
City of Columbus. }

I, Lawson E. Emerson, clerk of the supreme court of Ohio, do hereby certify that the foregoing petition for writ of error, assignments of error, order allowing writ of error, bond, writ of error, citation and sworn return of service are the original papers filed in this court in the case of William Marvin, plaintiff in error, against Belle B. Trout, defendant in error; that the printed copy of the record attached hereto is a true and correct copy of the printed record filed in said supreme court and used in the consideration of said cause, and that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the records of said court in said cause.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this 25th day of April, A. D., 1904.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

x In the Supreme Court of the State of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } No. 8416.

Error to the circuit court of Hancock county.

Record.

Geo. H. Phelps, Alfred Graber, J. A. Bope, Geo. F. Pendleton, attorneys for plaintiff in error.
Poe & Poe, attorneys for defendant in error.

Filed Jun- 18 1903 Supreme court of Ohio.
L. E. EMERSON, *Clerk.*

1 In the Supreme Court of the State of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } No. —.

Petition in Error.

(Filed in Supreme Court April 27, 1903.)

The plaintiff in error says that at the December term, A. D. 1902, of the circuit court of Hancock county, Ohio, to-wit, on January 26th, 1903, as shown by the record, the said Belle B. Trout as plaintiff, recovered a judgment against said William Marvin as defendant, and an order and decree of said circuit court directing a sale of certain real estate of said William Marvin to satisfy such judgment, in a certain action then pending in said circuit court numbered 965, the same upon appeal of cause numbered 11689 from the
2 court of common pleas of said Hancock county, between the same parties; and at the same time obtained a finding of facts and of law in her favor against him, said William Marvin, all by the consideration of said circuit court; a transcript of the docket and journal entries in said cause, and the original papers and pleadings and transcripts used and referred to in said trial in said circuit court, together with the bill of exceptions, the motion for a new trial, and the motion to make the finding of facts more definite and certain, are filed with this petition in error.

Plaintiff in error further says that there are errors appearing upon the record and proceedings aforesaid, in this, to-wit:

First. Said circuit court erred in overruling said motion of said William Marvin for a new trial.

Second. Said circuit court erred in refusing to grant the motion of said William Marvin to find from the evidence the facts that warrant the conclusion that said William Marvin "had actual knowledge" of the alleged gambling, and the facts from which the conclusion is made up that he "knowingly permitted" said premises to be used for gambling purposes.

Third. Said findings of said circuit court that said William Marvin "had actual knowledge" of, or "knowingly permitted" said gambling upon his said premises in the record described are not sustained by the facts set forth in the bill of exceptions, nor by the evidence adduced at said trial.

3 Fourth. The facts found by said circuit court are not sustained by the evidence.

Fifth. The conclusions of law found by said circuit court are not sustained by the evidence, nor by the facts as found.

Sixth. The findings, decisions and judgment of said circuit court are not sustained by sufficient evidence, nor by competent evidence, and the same are contrary to the evidence.

Seventh. The findings, decision and judgment of said circuit court are contrary to law.

Eighth. Said findings, decision and judgment are for a sum greatly in excess of the sum of money alleged to have been lost by said Frank H. Trout in said gambling to said James Clifford and Jacob Gassman, and said circuit court erred in adjudging against said William Marvin in said action in said circuit court the costs and interest that had been adjudged against said James Clifford and Jacob Gassman in said suit against them, and said circuit court erred in adjudging that said William Marvin pay to said Belle B. Trout the interest that had accrued upon said judgment against said James Clifford and Jacob Gassman, and to which judgment said William Marvin was not a party.

Ninth. Said circuit court, in said findings, decision and judgment, exercised an undue and unconstitutional use of the supposed police power of the State of Ohio. That the result thereof, if said

4 sale be made as ordered and adjudged by said circuit court, is and will be the forfeiture of the fee of his said real estate, and a forced seizure and sale thereof for the private benefit of said Belle B. Trout, to whom said William Marvin owed no duty, debt or obligation.

Tenth. The said circuit court erred in giving to said section forty-two hundred and seventy-three (4273) of the statutes of Ohio scope and effect, as against said William Marvin, and erred in not holding said section forty-two hundred and seventy-three (4273) to be unconstitutional and void.

Eleventh. The said circuit court erred in giving to section forty-two hundred and seventy-five (4275) of the statutes of Ohio, upon which said action in said circuit court is founded, scope and effect as

against said William Marvin, and erred in not holding said section forty-two hundred and seventy-five (4275) to be unconstitutional and void.

Twelfth. Said findings, decision and judgment of said circuit court violate the constitution of the State of Ohio in this, to-wit:

(*a.*) They in effect violate article 1, section 1, of the bill of rights by depriving said William Marvin of the right of "enjoying" and "possessing" his said real estate. The same not having been in any manner alienated by him, not liable for any tax, assessment or public charge, nor taken for any public use.

(*b.*) They in effect violate article 1, section 5 of said bill of rights, which guarantees to said William Marvin "the right of trial
5 by jury." Whereas said action was brought as a suit in equity to enforce an alleged lien, the legality of which was not triable by jury, and said findings, decision and judgment herein complained of were by the consideration of said circuit court, which has no jurisdiction to provide and secure a jury trial.

(*c.*) They in effect violate article 1, section 16 of said bill of rights by making his said real estate liable to be sold to pay a debt or charge not created by his own act or volition, nor adjudged against him "by due course of law."

(*d.*) They in effect violate article 1, section 19, of said bill of rights, which provides that "private property shall ever be held inviolate, but subservient to the public welfare,"—whereas, by the consideration of said circuit court, the said real estate of this plaintiff in error is adjudged to be taken from him by the public, and ostensibly for the public good, but in fact for the private use and benefit of said Belle B. Trout, and as a pretended bonus or gift to her by the State of Ohio out of the said real estate, and the proceeds thereof.

(*e.*) They in effect violate article 2, section 28, of the constitution of the State of Ohio, "by impairing the obligation" of the contract of deed and his title whereby he holds his right to possess and enjoy his said real estate.

(*f.*) They in effect violate the substance and the spirit of the said State constitution under the guise of enforcing the supposed police power of the State, in an excessive, unreasonable and un-
6 necessary manner, to-wit, by the seizure and forced sale of said property, which is in effect a forfeiture and confiscation thereof. Whereas ample police power is vested in the State of Ohio to abate gambling places, and to punish gamblers and any who may aid and abet them, without resorting to the forfeiture or confiscation of the real estate upon which the supposed gambling has been done.

(*g.*) Said findings, decision and judgment are in effect and results a violation of article 1, section 9, of said constitution of Ohio, which prohibits "excessive fines" and "cruel and unusual punishments," inasmuch as said Belle B. Trout is not shown to have been injured, either in her person, her reputation or her estate, by any act or omission done or suffered by said William Marvin.

(*h.*) Said circuit court erred in its said findings, decision and judgment in holding that said William Marvin had actual knowledge of said gambling and knowingly permitted the same, and was therefore liable to have his said real estate taken away from him without a trial and conviction, under the next section of the statutes, to-wit, section forty-two hundred and seventy-six (4276) as a principal offender, the said findings, decision and judgment of said circuit court making him to appear to be guilty as a principal, and the punishment meted out to him being the same as if tried by a jury and found guilty as a principal offender.

Thirteenth. Said findings, decision and judgment of said circuit court violate in effect and results section one (1) of article fourteen (14) of the amendments to the Constitution of the United States, which provides, to-wit: that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

7

Plaintiff in error avers and claims that said violations are apparent in the following particulars, to-wit:

(*a.*) That he is a citizen of the United States, and as such entitled to be protected against said statutes of Ohio, and said decision of the circuit court made thereunder, to the same extent as if said findings, decision and judgment were made and rendered by a court of the United States:

(*b.*) He claims and avers that his privileges and immunities have been abridged as a citizen of the United States by said statutes of Ohio and said decision, because they in scope and effect amount to an attainder as to his said real estate and forfeiture of the same, even beyond his own life, which is prohibited by article 1, section 9, of said Constitution of the United States in these words, to-wit: "No bill of attainder or *ex post facto* law shall be passed." And said decision was made to have a *post facto* effect, to operate as a lien upon his said real estate after the judgment creating a lien had long before been reversed by the same circuit court, and was void as a lien.

8

(*c.*) He claims and avers that said sections of said statutes and said decision complained of are a violation of article 1, section 10, of the Constitution of the United States, which provides, among other things, that "No State shall * * * pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts. * * *" He avers that all the consequences of attainder, to the full extent of forfeiture of his said real estate in fee simple are imposed upon him by said State of Ohio, and the obligation of his contract of deed whereby he holds his title, and the evidence thereof, is cut off and destroyed.

(*d.*) He claims and avers that the consequence and effect of said sections of said statutes, and said decision thereunder, visit upon him a punishment greater than is provided for the crime of treason by section 3 of article 3 of said Constitution of the United States,

which prohibits a forfeiture except during the life of the person attainted; and which punishment without conviction of any crime known to the law is unreasonable.

(*e.*) He avers and claims that the consequences of said proceedings and judgment against him and the effect thereof deprives him of his said property and real estate "without due process of law," within the said section 1 of said article fourteen (XIV) of the amendments to said Constitution of the United States.

(*f.*) He avers and claims that upon the face of said record and proceedings of said circuit court he owed no debt, or obliga-
9 tion, or duty, to said Belle B. Trout to be compensated by any compensation moving from him to her, and that the legal effect and result is that his said real estate is confiscated and the proceeds given to her to the extent, at least, of said judgment, interest and costs, and without opportunity to have a jury pass upon the questions, whether said Frank H. Trout in fact lost any money by gambling with said James Clifford and Jacob Gassman; whether, if he did, his gains did not exceed his losses; whether, in fact, said Belle B. Trout did not encourage him in said gambling, and was content with his gains, and sought to recover his losses and let him pocket his gains; whether there was no collusion between the parties in the recovery of said alleged judgment against said James Clifford and Jacob Gassman; whether said gambling was done upon the said real estate of said William Marvin; whether he knowingly permitted the building upon said real estate to be used by said James Clifford and Jacob Gassman for gaming purposes; the sum of money, if any, actually lost by such gaming, and all the essential elements triable by jury not having been submitted by the court to a jury, and a jury not being waived, constitute in fact and effect the taking of his said property without due process of law, within the purview of said fourteenth amendment.

Fourteenth. The said sections of the statutes of Ohio, and said proceedings of said circuit court, violate the constitution of the State of Ohio and the Constitution of the United States, and the amend-
ments thereto, in particulars other than above specially men-
10 tioned; and there are divers errors in the record and proceedings, other than those herein pleaded, none of which plaintiff in error waives.

Fifteenth. Plaintiff in error says the errors herein complained of are prejudicial to him, and have been preserved in the record by exception where necessary to obtain a review of said findings, decision and judgment of said circuit court.

The plaintiff in error prays that said findings, decision and judgment of said circuit court be reversed and held for naught; and that he may be restored to all things he has lost by reason thereof.

GEO. H. PHELPS,
J. A. BOPE,
ALFRED GRABER,
GEO. F. PENDLETON,
Attorneys for Plaintiff in Error.

The defendant in error waives the issuing and service of summons in error, and enters her appearance in the supreme court of Ohio upon the plaintiff in error filing the foregoing petition in error therein.

POE & POE,
Attorneys for Defendant in Error.

Dated April 24, 1903.

11 THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

BELLE B. TROUT, Plaintiff, }
against }
WILLIAM MARVIN, Defendant. }

Petition.

(Filed in Common Pleas Court March 7, 1896.)

(Filed in Circuit Court March 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

The plaintiff says:

The defendant, William Marvin, now is, and continuously for more than four years, now last past, has been the owner of the following real estate situate in the county of Hancock, and State of Ohio, and known and described as lot number eighty-six (86) in the city of Findlay, and the buildings thereon.

She says for many years past, including all the period of time from March 20, 1893, to March 19, 1894, James Clifford and Jacob Gassman occupied certain rooms in said buildings on said lot and during all said time were therein engaged in carrying on the business of gaming and gambling for money in violation of law; during all which time and during all said period, from March 20,
12 1893, to March 19, 1894, the defendant knowingly permitted his said rooms and buildings and property to be so occupied and used by said James Clifford and Jacob Gassman, for gaming purposes as aforesaid.

She says that at the March term, 1895, of the court of common pleas of said county of Hancock, State of Ohio, in a certain action then and theretofore pending in said court, being cause No. 10796, wherein this plaintiff, Belle B. Trout, was plaintiff, and said James Clifford and Jacob Gassman and defendant William Marvin were defendants, she, said plaintiff, duly recovered a judgment against said James Clifford and Jacob Gassman and William Marvin for the

sum of three thousand, four hundred and seventy-three ($3,473.00) dollars damages, and costs of suit taxed at one hundred and forty-three and 97-100 dollars ($143.97). That said action was brought by said plaintiff against said James Clifford, Jacob Gassman and William Marvin pursuant to section forty-two hundred and seventy-three (4273) of the Revised Statutes of Ohio of 1890, which section is embraced in chapter five of title five of said statutes, to recover from said James Clifford, Jacob Gassman and William Marvin money staked and betted by one Frank H. Trouth, who is husband of plaintiff, with said James Clifford, Jacob Gassman and William Marvin on certain gaming transactions, which said judgment in favor of said plaintiff and against said James Clifford, Jacob Gassman and William Marvin was for the amount found by said court to have been staked and betted by said Frank H. Trout with said James Clifford, Jacob Gassman and William Marvin on said
13 gaming transaction, and won by said James Clifford, Jacob Gassman and William Marvin from said Frank H. Trout, and by said Frank H. Trout paid over to them.

Afterward the said James Clifford, Jacob Gassman and William Marvin filed their petitions in error in the circuit court of said Hancock county, being cause No. 536, asking the reversal of said judgment, and afterward, at the December term, 1895, of said circuit court, said cause was heard on error, and by the judgment of said circuit court said judgment as to said William Marvin was reversed, but as against said James Clifford and Jacob Gassman the same was by said circuit court affirmed, so she says said judgment of said court of common pleas in her favor is still in full force against said James Clifford and Jacob Gassman, unreversed, and no part of the same has ever been paid.

She says said games of chance aforesaid, on which said money was staked and betted and lost by said Frank H. Trout to said James Clifford and Jacob Gassman, were played within said period from March 20, 1893, to March 19, 1894, at and in said rooms in said buildings on said lot 86 aforesaid, so owned by said defendant, William Marvin, while said defendant so knowingly permitted the same to be occupied and used as aforesaid by said James Clifford and Jacob Gassman for said gaming purposes.

The plaintiff therefore prays the court to declare the judgment aforesaid a lien on said building and real estate and for an
14 order that said real estate and building may be sold for the satisfaction of the judgment, with interest on the same from its date, and costs aforesaid, and for all proper relief.

JOHN POE,
Attorney for Plaintiff.

(Verification omitted.)

In the Court of Common Pleas of Hancock County, Ohio.

BELLE B. TROUT
vs.
WILLIAM MARVIN.

Demurrer.

(Filed in Common Pleas Court March 25, 1896.)

(Filed in Supreme Court July 1, 1898.)

(Filed in Circuit Court March 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

And now comes the defendant and demurs to the petition of the plaintiff on the ground that said petition does not state facts sufficient to constitute a cause of action.

J. A. & E. V. BOPE,
F. T. DUNN, AND
GEO. H. PHELPS,
Attorneys for Defendant.

15 In the Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT
vs.
WILLIAM MARVIN.

Answer.

(Filed in Common Pleas Court March 15, 1900.)

(Filed in Circuit Court March 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

And now comes William Marvin, the defendant, leave of court for that purpose having been first granted, and for his answer to the petition of the plaintiff admits the ownership by him of the premises described in the petition, and at the time alleged in the petition. He also admits the recovery of the judgment by the plaintiff at the time and for the amount stated in the petition, and that said judgment was reversed as to this defendant as in the petition set forth, but further as to said petition, this defendant denies the same, and each and every allegation thereof and prays that he may be hence dismissed and recover his costs.

J. A. & E. V. BOPE AND
GEO. H. PHELPS,
Attorneys for Defendant.

(Verification omitted.)

16 In the Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT
vs.
WILLIAM MARVIN.

Amendment to Answer.

(Filed in Common Pleas Court November 27, 1901.)

(Filed in Circuit Court March 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

And now comes the defendant, leave of court for that purpose being first had, and for an amendment to his answer heretofore filed in this action, says that the plaintiff's action, if any she had, is barred by the statute of limitations of the State of Ohio in such case made and provided.

PHELPS & DAVID,
J. A. & E. V. BOPE,
E. T. & B. L. DUNN, AND
ALFRED GRABER,
Attorneys for Defendant.

(Verification omitted.)

17 Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

Reply to Amendment to Answer.

(Filed in Circuit Court March 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

(Filed in Common Pleas Court November 30, 1901.)

Now comes the plaintiff and for reply to amendment to answer filed herein by defendant, November 27, 1901, denies each and every allegation in said amendment to answer contained.

JOHN POE,
Attorney for Plaintiff.

(Verification omitted.)

18 *Transcript of Journal Entries.*

(Filed in Circuit Court February 24, 1898.)

(Filed in Supreme Court July 1, 1898.)

(Filed in Circuit Court March 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

THE STATE OF OHIO:

Court of Common Pleas of Hancock County, January Term, A. D. 1898.

At a term of common pleas within and for the county of Hancock, in the State of Ohio, begun and held at Findlay on the 3rd day of January, A. D., 1898, before Hon. Charles M. Melhorn, presiding judge, among other proceedings then and there had by and before said court, as appears by its journal, is the following, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 11689.

By order of court this cause is continued to the next term thereof.—Journal 32—207. April 10, 1896.

And afterwards on the 30th day of November, 1896, the following order was made on Journal 33, page 5:

19 BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And afterwards, on the 20th day of February, 1897, the following order was made on Journal 33, page 219:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And afterwards, on the 9th day of April, 1897, the following order was made on Journal 33, page 289:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

20 And afterwards, on the 14th day of January, 1898, the following order was made on Journal 34, page 279:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

This day came the said plaintiff, as also the said defendant, by their respective attorneys, and thereupon this cause came on and was heard by the court upon the demurrer of defendant to plaintiff's petition, and the arguments of counsel.

Upon consideration whereof, and being fully advised in the premises, the court is of the opinion, and so find, that said demurrer is well taken, and that said petition does not state facts sufficient to constitute a cause of action in favor of plaintiff and against the defendant.

It is therefore by the court considered and adjudged that said demurrer be and the same is hereby sustained at plaintiff's costs.

To which opinion, ruling and judgment of the court plaintiff at the time excepted and here and now excepts.

Thereupon, on motion of plaintiff, leave is granted to file an amended petition by January 29, 1898.

21 And afterwards, on the 10th day of February, 1898, the following order was made on Journal 34, page 373:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

This day again came the said parties, and this cause having been heard on the demurrer to the petition, and said demurrer sustained, the plaintiff not desiring to plead further, it is considered by the court that the said defendant go hence without day, and recover from the said plaintiff his costs herein expended. To all of which the plaintiff at the time excepted and here now excepts.

I, Presley E. Hay, clerk of the common pleas court of Hancock county, Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

Witness my hand and the seal of said court at Findlay, this 24th day of February, A. D., 1898.

[SEAL.]

PRESLEY E. HAY, *Clerk*,
By CARRIE N. HAY, *Deputy*.

22 *Transcript of Journal Entries.*

(Filed in Circuit Court March 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

THE STATE OF OHIO:

Court of Common Pleas of Hancock County, January Term, A. D. 1902.

At a term of the court of common pleas within and for the county of Hancock, in the State of Ohio, begun and held at Findlay on the 6th day of January, A. D., 1902, before Hon. Charles M. Melhorn, presiding judge, among other proceedings then and there had by and before said court, as appear by its journal, is the following, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 11689.

By order of court this cause is continued to the next term thereof.—Journal vol. 37, page 115. Dated June 26, 1900.

And on the 10th day of December, 1900, the following entry was made on Journal vol. 37, page 413, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

23 And on the 15th day of March, 1901, the following entry was made on Journal vol. 38, page 27, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 29th day of April, 1901, the following entry was made on Journal vol. 38, page 180, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 27th day of November, 1901, the following entry was made on Journal vol. 38, page 554, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

On application of the defendant, leave is granted him to file an amendment to his answer herein, instanter, which is accordingly now filed, and this cause is continued.

24 And on the 14th day of March, 1902, the following entry was made on Journal vol. 39, page 276, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

On this 14th day of March, 1902, came the said parties, with their attorneys, and thereupon this cause came on and was heard by the court upon the petition of the said plaintiff, the answer of said defendant, the reply of plaintiff to said answer, the amendment of defendant to his said answer and the reply of plaintiff thereto, and the evidence, and was argued by counsel; on consideration whereof, and being fully advised in the premises, the court find that the facts stated and allegations in said petition of plaintiff are true as therein set forth. That the equity of this case is with the said plaintiff. That the plaintiff is entitled to the relief sought in her petition herein. That there is now due to the said plaintiff from said James Clifford and Jacob Gassman, upon said judgment in her petition mentioned, the said principal sum of thirty-four hundred and seventy-three dollars, together with the interest thereon to this date, the further sum of fourteen hundred and twenty-nine dollars, in all of forty-nine hundred and two dollars, and the costs of said case, for which judgment was also rendered as alleged in the petition herein, the further sum of $143.97. That the said real estate in the petition described, to-wit, situate in the city
25 of Findlay, county of Hancock and State of Ohio, known and described as lot number eighty-six (86) in said city, and the buildings thereon, is liable for said judgment and ought to be sold for the payment of the same. That the said judgment should be, and the same hereby is, declared to be and to constitute a good and valid lien upon said real estate for the amount of said judgment. The

court further find that the plaintiff is entitled to have said real estate sold by the sheriff of said county for the payment and satisfaction of said judgment. It is further ordered and adjudged that the plaintiff recover from the defendant her costs in this case expended, taxed at $—, and that the defendant pay the costs by him made herein.

It is therefore adjudged and decreed that the lands and tenements mentioned and described in plaintiff's petition herein, to-wit, situate in the city of Findlay, county of Hancock and State of Ohio, and being lot number eighty-six (86) in said city, and the buildings thereon, be sold according to law by the sheriff of Hancock county, Ohio, and that out of the proceeds of said sale he pay the taxes and assessments then on said premises; second, the costs and increase costs herein; third, to the said plaintiff the said sum of five thousand and forty-six and 48-100 dollars, with interest on said principal sum of thirty-four hundred and seventy-three dollars thereof from this date, and the residue, if any, he pay to the said William Marvin on demand, and it is further ordered that an order of sale issue to the said sheriff to carry the foregoing judgment into effect.

26 On motion and for good cause shown the advertisement of sale herein in a German newspaper is hereby dispensed with.

And thereupon came the defendant and gave notice of his intention to appeal, and of his appeal of this cause to the circuit court of Hancock county, and the court fixed the bond for such appeal at 100 dollars.

I, P. W. Ewing, clerk of the common pleas court of Hancock county, Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

Witness my hand and the seal of said court at Findlay, this 18th day of March, A. D., 1902.

[SEAL.]

P. W. EWING, *Clerk*,
By W. P. ALSPACH, *Deputy*.

27 In the Circuit Court of Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

Motion to Dismiss Appeal.

(Filed in Circuit Court December 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

Now comes the plaintiff and moves the court to dismiss the appeal in this case for the reasons following:

1. That this is not a civil action.
2. That this is a special proceeding.
3. That this is a proceeding in which a remedy was sought by an original application to the court of common pleas for judgment and order, and is a special proceeding.
4. That this is a special proceeding under a special statute and which statute does not provide for an appeal in such case.
5. That this case was a summary application to the court of common pleas in an action after judgment, and is a special proceeding from which no appeal lies according to the laws of Ohio.
6. This case is not appealable from the common pleas to the circuit court under the laws of Ohio.

JOHN POE,
Attorney for Plaintiff.

28 In the Circuit Court, Hancock County, Ohio.

BELLE B. TROUT
vs.
WILLIAM MARVIN. } No. 965.

Motion to Consolidate.

(Filed in Circuit Court December 18, 1902.)

(Filed in Supreme Court April 27, 1903.)

And now comes the defendant and moves this court for an order consolidating this cause with cause No. 966 on the docket of this court, the same being an action between the same parties, capable of being so consolidated under section 5120 of the statute in such cases made and provided.

Dated December 18, 1902.

PHELPS & DAVID,
J. A. & E. V. BOPE, AND
E. T. & B. L. DUNN,
Defendant's Attorneys.

29 *Transcript of Journal Entries, Circuit Court.*

(Filed in Supreme Court April 27, 1903.)

THE STATE OF OHIO:

Circuit Court of Hancock County, December Term, A. D. 1903.

At a term of the circuit court, within and for the county of Hancock, in the State of Ohio, begun and held at Findlay, on the 9th

day of December, A. D., 1902, before Hon. S. M. Douglass, presiding judge, and Hon. R. M. Voorhees and Hon. M. H. Donahue, judges, among other proceedings then and there had by and before said court, as appears by its journal, is the following, to-wit:

BELLE B. TROUT, Plaintiff in Error,
vs.
WILLIAM MARVIN, Defendant in Error. } No. 965.

March 18, 1902.—Appeal bond filed.
March 18, 1902.—Transcript filed.
March 18, 1902.—Six original papers filed.
December 18, 1902.—Motion to dismiss appeal filed.
December 18, 1902.—Motion to consolidate with case 966 filed.
December 22, 1902.—Six subpœnas filed.
January 15, 1903.—Motion for new trial filed.
January 26, 1903.—Motion for new trial refiled.
30 January 26, 1903.—Motion to revise facts, etc., filed 3.25 p. m.
December term, 1902, to-wit: January 26, 1903.—Finding and decree for plaintiff. Judgment against defendant for costs. Execution awarded. Remanded to common pleas court for execution and further proceedings according to law. Defendant excepts. Motion for new trial overruled. Ex. Twenty days allowed for finding of facts. Statutory time for bill of exceptions.
February 24, 1903.—Bill of exceptions filed.
February 24, 1903.—Notice of filing of bill of exceptions mailed to John Poe, attorney for plaintiff.
March 19, 1903.—Bill of exceptions transmitted to trial judges.
March 25, 1903.—Bill of exceptions received from trial judges.

And on the 21st day of May, 1902, the following entry was made on Journal vol. 4, page 182, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

Appeal.

By order of the court this cause is continued to the next term thereof.

31 And on the 18th day of December, 1902, the following entry was made on Circuit Court Journal vol. 4, page 244, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

On this 18th day of December, 1902, came the parties, with their attorneys, and thereupon, on application and motion of defendant, and for good cause shown, it is ordered that this cause be, and now is, consolidated with cause No. 966, Belle B. Trout *vs.* William Marvin, now on the docket of this court; said cause is to proceed to trial as consolidated cause No. 966 in this court.

And on the 19th day of December, 1902, the following entry was made on Circuit Court Journal vol. 4, page 247, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

On this 19th day of December, 1902, came the said parties with their attorneys, and thereupon this cause came on to be heard upon the motion of defendant for an order consolidating this cause with cause No. 966 on the docket of said circuit court of Hancock county, on consideration whereof, and being fully advised in the premises, the court find that said motion to consolidate should be, and
32 the same hereby is, overruled and refused. And the order heretofore entered consolidating said cause is vacated and set aside.

And on the 26th day of January, 1903, the following entry was made on Circuit Court Journal vol. 4, page 267, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

On this 26th day of January, 1903, again came the said parties, with their attorneys, and this cause having at a former day of this December term, 1902, of this court been submitted to the court, upon the pleadings and evidence and arguments of counsel, and the court being fully advised in the premises, on the request of the defendant, that its conclusions of facts be stated separately from its conclusions of law, find as its conclusions of fact:

1. That during the period mentioned and referred to in plaintiff's petition herein, to-wit, from March 20, 1893, to March 19, 1894, and for a long time before and ever since, the defendant, William Marvin, was and has been the owner in fee of the following described real estate situate in the city of Findlay, Hancock county, Ohio, to-wit: twenty-nine and one-half feet off of the south side of

said lot No. 86, described in the petition, in said city, with
33 all the buildings thereon, which described part of said lot and said buildings thereon is referred to in this entry by the designation, "said real estate," and said period of time from March 20th, 1893, to March 19th, 1894, is referred to in this entry by the designation, "said period."

2. That during all "said period" James Clifford and Jacob Gassman held and occupied "said real estate" under a lease from defendant as tenants of said William Marvin and were engaged in and upon "said real estate" in the business of gaming and gambling for money at games of chance, in violation of the laws of the State of Ohio and of the provisions of chapter five, title five, of the Revised Statutes of the State of Ohio.

3. That within "said period" one Frank H. Trout, husband of plaintiff, in and upon "said real estate," engaged with said James Clifford and Jacob Gassman in said games of chance and gambling operations so there then conducted, and betted and wagered his money therein and thereon, and lost as said gambling to said James Clifford and Jacob Gassman, who at said gambling won from said Frank Trout, the sum of three thousand four hundred and seventy-three dollars in money, which sum said Trout then paid to them. That afterwards, at the March term, 1895, of the court of common pleas of said county of Hancock, to-wit, on the 2nd day of May, 1895, in an action therein, therefor duly brought by her pursuant to section 4273 of the Revised Statutes of Ohio, to recover said moneys so lost, the plaintiff, by the consideration of said court, duly recovered a judgment therefor against said James Clifford
34 and Jacob Gassman, to-wit: for said sum of three thousand four hundred and seventy-three dollars, the same being the amount of money found by said court in said action to have been so lost by said Frank H. Trout at said gaming and gambling within "said period," and by him paid to said James Clifford and Jacob Gassman; also for the costs of said case in the sum of one hundred and forty-three and 97-100 dollars, and that plaintiff, in consequence of said loss at gaming, sustained damages to the amount of said judgment.

4. That said judgment for three thousand four hundred and seventy-three dollars was so rendered for said money so lost and paid by Frank H. Trout to said James Clifford and Jacob Gassman while so gambling with them within "said period" in and upon "said real estate," which said judgment for damages and costs is still in full force and effect, the same never having been reversed, modified or set aside, and no part thereof has ever been paid; that there is now due to the said plaintiff upon said judgment the said principal sum of three thousand four hundred and seventy-three dollars, together with interest thereon to this date, the further sum of sixteen hundred and nine dollars, in all five thousand and eighty-two dollars and the costs of said case, for which plaintiff also so re-

covered judgment the further sum of one hundred forty-three and 97-100 dollars.

5. That during all "said period" the said defendant, William Marvin, had actual knowledge that said James Clifford and Jacob Gassman were so using his "said real estate" for said gaming
35 and gambling purposes aforesaid, and that they were therein and thereon conducting and carrying on said games of chance, gaming and gambling contrary to law as aforesaid, and knowingly permitted his "said real estate" to be so used and occupied for said gaming and gambling purposes and for said games of chance at which said Frank H. Trout so lost said sum of money.

6. That within the year next after the date of the rendition of said judgment for said money so lost, the plaintiff duly commenced this action in said court of common pleas of said Hancock county.

And as its conclusions of law upon the above found facts the court find:

1. Said action is not barred by the statute of limitations.

2. That the equities of this case are with the said plaintiff.

3. That "said real estate," to-wit: twenty-nine and one-half feet off of the south side of lot eighty-six, described in the petition, situate in the city of Findlay, in said county of Hancock, and the State of Ohio, and the buildings thereon, is held liable for said judgment, interest and costs aforesaid, and ought to be sold for the payment of the same.

4. That said judgment should be, and the same hereby is, declared and decreed to be and to constitute a good and valid lien
36 upon "said real estate" for said amount.

5. The court further find that the plaintiff is entitled to have "said real estate" sold by the sheriff of said county of Hancock for the payment and satisfaction of the said judgment, interests and costs; and that the plaintiff is entitled to recover from defendant her costs in this case expended, and that defendant should pay the costs by him made herein.

It is therefore considered, adjudged and decreed by the court that the portion of the lands and tenements mentioned in plaintiff's petition, described as follows, to-wit: twenty-nine and one-half feet off of the south side of said lot numbered eighty-six, in the city of Findlay, Hancock county, Ohio, with the buildings thereon, be appraised, advertised and sold according to law by the sheriff of said Hancock county, and that out of the proceeds of the sale he pay:

1. The taxes and assessments then on the same.

2. The costs and increase costs herein.

3. To the said plaintiff said sum of five thousand eighty-two dollars ($5,082), with interest on said principal sum of three thousand four hundred and seventy-three dollars ($3,473) from this date, and to the clerk of said court of common pleas said costs of said suit in which said judgment was rendered, to-wit: said sum of $143.97, and the residue, if any, he pay to the said William Marvin, defendant,

on demand. And it is further ordered that an order of sale issue to said sheriff to carry the foregoing judgment and decree into effect.

It is further ordered that a special mandate be sent to the
37 court of common pleas of Hancock county, Ohio, for execution and further proceedings upon said judgment and decree.

To all of which the defendant at the time excepted and here now excepts, and it is ordered that the journal of this case be kept open the statutory period for his bill of exceptions.

And on the 26th day of January, 1903, the following entry was made on Circuit Court Journal vol. 4, page 270, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

Thereupon on this 26th day of Jan., 1903, came the said parties with their attorneys and thereupon this cause came on and was heard upon the motion of the defendant to set aside the findings of facts and conclusions of law and the judgment and decree in this case; upon consideration whereof and being fully advised in the premises, the court find that said motion should be, and the same hereby is overruled and refused. To all which action of the court the defendant at the time excepted and here and now excepts. And the court allows the statutory time to defendant for a bill of exceptions.

38 And on the 26th day of January, 1903, the following entry was made on Circuit Court Journal, vol. 4, page 270, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

On this 26th day of Jan., 1903, again came said parties, and thereupon this cause was submitted to the court on the motion of the defendant to make the finding of facts more definite and certain, on consideration whereof the court is of the opinion that the said motion should be, and the same is hereby overruled and refused.

And on the 25th day of March, 1903, the following entry was made on Circuit Court Journal, vol. 4, page 281, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

The bill of exceptions taken by the defendant having been filed with the clerk in this case on Feb. 24th, 1903, after due notice

thereof the same day to the attorney of plaintiff, who examined and approved such bill of exceptions, and no objection or amendment thereto having been filed, the said clerk on March 19th, 1903, having duly transmitted said bill of exceptions to the trial judges, and such trial judges having endorsed thereon that they received the
39 same on March 23, 1903, and they on the same day having found the same to be a true bill of exceptions, settled, allowed and signed the same as evidenced by the signatures of such trial judges thereto, it is now on this March 25th, 1903, ordered on application of the defendant that said bill of exceptions be, and the same hereby is, filed with the papers of said cause and made a part of the record thereof, but the same is not to be spread upon the journal or final record of said cause.

I, P. W. Ewing, clerk of the circuit court of Hancock county, Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said circuit court.

Witness my hand and the seal of said court at Findlay, this 9th day of April, A. D., 1903.

[SEAL.]

P. W. EWING, *Clerk*,
By W. P. ALSPACH, *Deputy*.

40 Circuit Court, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

Motion for New Trial.

(Filed Jan. 15, 1903.)

(Also marked filed Jan. 26, 1903.)

(Filed in Supreme Court April 27, 1903.)

Now comes the said defendant, William Marvin, and moves the court to set aside and vacate the decision and judgment by it herein rendered, and to grant to this defendant a new trial of this cause, for the reasons and upon the grounds following, to-wit:

1. Because the said decision and judgment is contrary to the uncontroverted evidence in the case.

2. Because the said decision and judgment is contrary to law.

3. For error of law occuring during the trial of the cause, and at the time excepted to by this defendant, in this, among other things, to-wit: that the court erred in admitting testimony offered by plaintiff to sustain her case against the exceptions of said defendant.

4. Because the said decision and judgment is not sustained by the evidence submitted by the plaintiff in the case.

5. Because the statute under, by authority and in pursu-
41 ance of which the said plaintiff brought her case is unconstitutional and in contravention of the constitution of the State of Ohio.

6. Because the said action was at the time, and from the commencement thereof, barred by the statute of limitations.

WILLIAM MARVIN, *Defendant,*
By PHELPS & DAVID,
J. A. & E. V. BOPE,
ALFRED GRABER,
His Attorneys.

42 In the Circuit Court of Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

Motion of Defendant to Make Finding of Facts More Definite and Certain.

(Filed Jan. 26, 1903, at 3:25 p. m.)

(Filed in Supreme Court April 27, 1903.)

The defendant moves the court to make its findings of fact more definite and certain, and to correct the same in the following particulars, to-wit:

1. The preliminary statement requesting a finding of facts is not full enough to comply with the requirements of section 6710 of the statutes of Ohio as amended October 22nd, 1902, 96 Ohio Laws, Extraordinary Session, page 11.

2. The words "a jury being waived" should be stricken out to conform to the facts, as the court tried the case as an equity case in which neither side had a right to demand, nor to waive a jury, and a jury was neither waived nor demanded by either of the parties.

3. The finding number five (5) as to the words "had actual knowledge" and "knowingly permitted" are not facts but mere
43 legal conclusions; whereas defendant asks that the facts that constitute said alleged "actual knowledge" and said "knowingly permitted" be found by the court from the evidence, if any, so that it may appear as a fact whether or not said William Marvin was at any time present and saw any of said gambling, or whether he in fact ever gave any verbal or written permission for the same.

4. Defendant says said finding of facts as to his said alleged "ac-

tual knowledge" or that he "knowingly permitted" said gambling are not supported by the evidence.

J. A. & E. V. BOPE,
GEORGE H. PHELPS,
ALFRED GRABER,
GEO. F. PENDLETON,
Attorneys for Defendant.

BELLE B. TROUT
vs.
WILLIAM MARVIN. } No. 965, Docket 2.

Bill of Exceptions.

Date of the overruling of decision, January 26, 1903.
Exceptions filed with clerk of trial court, February 24, 1903.
(Must be within forty days after the overruling or decision.)
Notice of filing to plaintiff's attorney, February 24, 1903.
(By the clerk to adverse party or his attorney, forthwith after finding.)
Objections or amendments to the exceptions:
(Must be in ten days after the forty days.)
Transmitted to trial judge, March 19, 1903.
(Not less than twelve nor more than fifteen days after forty days from the overruling or decision.)

R. M. VOORHEES,
M. H. DONAHUE,
Trial Judges.

Received, March 23rd, 1903.
(Corrected) and allowed this 23rd day of March, 1903.

R. M. VOORHEES,
M. H. DONAHUE,
Trial Judges.

Transmitted back to clerk, March 23rd, 1903.

R. M. VOORHEES,
M. H. DONAHUE,
Trial Judges.

Received again by clerk, March 25th, 1903.
Filed in Hancock circuit court, February 24, 1903.

P. W. EWING, *Clerk,*
By W. P. ALSPACH, *Deputy.*

44 In the Circuit Court, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

Bill of Exceptions.

(Filed in Supreme Court April 27, '03.)

Appearances.

For plaintiff—John Poe.

For defendant—J. A. & E. V. Bope, George H. Phelps, Alfred Graber.

It was stipulated and agreed by the parties, in open court, that this cause and cause No. 966 between the same parties should, for convenience, be tried together, and that all evidence competent in either should be received generally in the trial, and that both parties waived all objections to the admission of any evidence in the record in this case which is competent in either of the cases, and the court accordingly so heard and tried the two cases together.

Be it remembered, that upon the trial of said cause, before the Hon. S. M. Douglass, Hon. R. M. Voorhes, and Hon. H. M. Donahue, at the December term, A. D. 1902, of the circuit court, within and for the county of Hancock and State of Ohio, the said defendant by his counsel made the following admission:

45 For the purpose of this action, it is admitted that between the 19th day of March, 1893, and the 20th of June, 1894, the premises described in the petition were used for gambling purposes by Clifford and Gassman, that they are the same premises in which the money described in judgment or represented by the judgments set up in the petition, are claimed to have been lost, but not admitting that plaintiff's husband, in fact, gambled with Clifford & Gassman between March 19th, 1893, and June 20th, 1894, it is admitted, for the purposes of this action, that if he did, such gambling was done in the building and upon the premises of the defendant described in the petition.

It is also conceded that the judgment was rendered against Clifford & Gassman.

It is further admitted that Clifford & Gassman occupied no other premises and conducted no gambling during the periods specified in the petition except the premises referred to in the petition, referred to as lot No. 86.

Thereupon B. F. WOLFF was called as a witness on behalf of plaintiff, who being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Wolff, you reside in Findlay?
A. Yes, sir.
Q. How long have you lived in Findlay?
A. About twelve years.
46 Q. What is your business?
A. Grocery business.
Q. A retail grocer?
A. Yes, sir.
Q. In North Findlay?
A. Yes, sir.
Q. Where is your store now with reference to Mr. Marvin's residence?
A. Why, my store is now at the corner of Main and Center at present.
Q. Tell the court whether at one time you had your grocery store in Mr. Marvin's Opera House building.
A. Yes, sir, I have been in the opera house building about four years.
Q. During what time, tell the court?
A. Why, I came to Findlay in 1891, I was in the store about one year before Mr. Marvin built the opera house and Mr. Marvin wanted me to occupy after that room was done, the Opera House room, the three floors.
Q. So you did that?
A. Yes, sir.
Q. Now, tell the court whether Mr. Marvin came into your store and sat and visited often times during that period you were in the building?
A. When I first came to Findlay, Mr. Marvin was not at home; he was, I believe, at California.
Q. In 1891?
A. Yes, sir. In the spring of 1891, March, I believe, Mr. Marvin came back from California, and after that, I got acquainted with Mr. Marvin and he has been in the store very frequently.
Q. And tell the court whether during 1893 or the forepart of 1894, say 1893, you had any talk with him with reference to this Clifford & Gassman place?
47 A. Why, Mr. Marvin was in the store at one time, one evening sitting around there——
Q. That is about how long after you went there, you say?
A. That was in 1893, I understand you? *A.* I think it was during that time.
Q. Now, tell the court about the conversation?

A. Well, Mr. Marvin told me—he spoke of his property—he claimed the property up town was one of his best paying properties.

Q. Which one did he refer to?

A. This Marvin block.

Q. Did he speak of who was occupying it?

A. There were several occupying it, several occupying the rooms. There was a saloon and gambling house owned and controlled by Clifford & Gassman——

(Objected to by counsel on behalf of defendant.)

Q. What was said?

A. He said those rooms were occupied by a saloon and also used for gambling.

Q. Did he say who occupied them?

A. Mr. Clifford and Mr. Gassman.

Q. What, if anything, did he say about where the saloon and gambling rooms were located in the building?

A. I don't know, as we came that far in the conversation, that he described the rooms to me.

Q. Now, let me ask you whether you had that conversation—Mr. Trout passed the window or you saw him there?

A. Mr. Trout came in my store at that time when we were together, he got a cigar.

Q. When he went out, what, if any talk, did you and Mr.
48 Marvin have?

A. When Mr. Trout left, I told Mr. Marvin, I heard Mr. Trout was the party who gambled. Mr. Marvin said: "Yes, Frank plays pretty heavy."

Q. And what, if anything, did he say to you as to what he got out of these rooms up there?

A. Why, to the best of my knowledge that I remember now, Mr. Marvin said he was getting a rake off; I don't know what it meant, but that was the remark.

Q. Was that in the same conversation in which he was talking about the saloon and gambling up there?

A. It was after, at the same time.

Q. I want to ask you what, if anything, Mr. Marvin said to you about where Frank was gambling?

(Objected to by counsel on behalf of defendant.)

Q. What further was said about that gambling business?

A. Why, Frank was gambling in his block.

Cross examination.

By Mr. PHELPS:

Q. Did he say that?

A. Yes, sir.

Q. Now, you had a law suit with Uncle Billy before you got through, did you?

A. Yes, sir.

Q. And you don't feel very friendly with him?

A. Just as friendly as ever with Mr. Marvin, yes, sir.

Q. Now, who did you first tell of the fact that you had any such conversations with Wm. Marvin; who did you tell it to after it happened?

A. I don't know as I have told anybody outside of Mr. Poe.

49 Q. How did you happen to tell Mr. Poe?

A. Mr. Poe came and asked me about his affairs.

Q. Whose affairs?

A. This gambling affair.

Q. Mr. Poe did?

A. Yes, sir.

Q. And you told him about this conversation?

A. Yes, he asked me some questions and I answered him, yes, sir.

Q. Where were you when you had this talk with Poe?

A. Up at my store.

Q. Poe came over there?

A. He was over there, yes, sir.

Q. Up to that time, you hadn't told anybody about it?

A. No, sir.

Q. Not a soul?

A. No, sir.

Q. You had no interest in it?

A. Not especially, no, sir.

Q. Did you send word to Mr. Poe to come to see you?

A. No, sir.

Q. Do you know anything about the fact how Poe got onto the fact that you knew so much about this?

A. No, sir, I don't know.

Re-direct examination.

By Mr. POE:

Q. You were asked about having a law suit with Mr. Marvin, let me ask you who it was, the real trouble there was with, whether it was Mr. Marvin or Willis?

(Objected to by counsel on behalf of defendant; objection sustained; to which ruling of the court, the plaintiff then and there excepted.)

50 Thereupon H. F. RAMSEY, was introduced as a witness on behalf of the plaintiff, who, being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Ramsey, where do you live?
A. In Findlay.
Q. What is your business?
A. I am contractor.
Q. Tell the court whether you were chief of police here two years?
A. I was, yes, sir.
Q. Under Mayor Watson?
A. Yes, sir.
Q. How long ago was that?
A. From April, 1900, to April, 1902.
Q. Do you know Mr. Marvin, Wm. Marvin?
A. Yes, sir.
Q. I want to ask you if about the middle of May last you met Mr. Marvin?
A. Yes, sir.
Q. Where did you meet him?
A. In Kenton.
Q. Hardin county?
A. Yes, sir.
Q. Did you have a talk with him there?
A. Yes, sir.
Q. Tell the court whether or not you came home on the same train with Mr. Marvin?
A. We did.
Q. Did you have some talk with him on the train?
A. Yes, sir.

Q. Tell the court what talk you had?

51 A. Well, Mr. Marvin and I were talking first about his property in North Carolina.

Q. In North Carolina?

A. Yes, sir; and he asked me if I lived in Findlay. I told him I did, and I told him who I was. He said, "You are the man, then, that Con Riley came to and talked about the Trout case, aren't you?" I said, "Yes, sir." He said, "They will have a good time proving I knew they were gambling there." I said to him, "Is that what they are trying to prove?" He said, "Yes, that is what they are trying to prove, but they will have a hard time trying to prove that." He said, "Did you ever see me in that gambling room?" I said, "No sir, nor you didn't see me there." I said, "I don't frequent such places." I said "You knew what you rented the property for, didn't

you?" He said, "I can know a good many things without seeing them."

Q. What, if anything, was said as to what the rooms were used for, and what he knew about it?

(Objected to by counsel on behalf of defendant.)

A. He didn't say.

Thereupon counsel on behalf of plaintiff offered in evidence the testimony of Mr. Heller, given in the former case in the common pleas court and transcribed for this case, marked Exhibit "No. 1."

(Counsel on behalf of defendant objected to so much of the evidance of Mr. Heller as relates to the premises as a gambling house; objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon the evidence of Mr. Heller was read to the
52 court, a copy of which is in the words and figures following, to-wit:

Thereupon Mr. HELLER was introduced as a witness on behalf of the plaintiff, who, being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Heller, you reside in Napoleon, I believe?
A. Yes, sir.
Q. You are an uncle of Mr. Frank H. Trout?
A. Yes, sir.
Q. Are you the Heller that used to be in the legislature from Ohio?
A. Yes, sir.
Q. What is your business?
A. Manufacturer.
Q. Of what?
A. Wind mills, pumps, tanks, other machinery.
Q. State whether in your business you, during 1893 and 1894, sometimes visited Findlay?
A. Yes, sir.
Q. Tell the court about what times in 1893 you visited Findlay?
A. In April, June and September, that I remember of.
Q. You were attending county fair in September, I believe?
A. Yes, sir.
Q. Tell the court whether or not in your mingling with the citizens in Findlay and people who came to Findlay, you had the
53 means of knowing the reputation of this Clifford-Gassman place, as to its being a gambling place?
A. To some extent.

Q. During 1893 and 1894?

A. To some extent.

Q. Tell the court what the reputation of the place was during those years?

A. It had the reputation away from home—I knew it more away from home than I did here in Findlay.

Q. Of what?

A. Of being a gambling place where they played pretty hard.

(Counsel on behalf of the defendant objected to the witness testifying as to the reputation away from home; which objection the court sustained.)

Q. Mr. Heller, with reference to your association with the people in Findlay and knowing what the reputation was in Findlay of this place?

A. Yes, it had the reputation here as a gambling house.

Q. Now, tell the court, Mr. Heller, whether or not you saw Mr. Trout in this gambling place at any time in 1893 or 1894?

A. I seen him in a room above Mr. Clifford's and Gassman's café, and saloon in the back part, a room up on the second floor at the rear of the building, in April and in June and in September.

Q. Of 1893?

A. Of 1893.

Q. And you may tell the court what was going on there, what was being conducted there, if you know?

A. Well, they were playing poker and sometimes playing "bank" as they called it.

Q. Faro bank?

A. I think.

54 Q. What is poker and what is faro bank; if you can, tell the court, so he will understand it?

A. Well, I don't know, it is a game of chance, played with cards; in poker, sometimes the best hand wins and sometimes it doesn't.

Q. And now, this bank—this wasn't the national bank—what kind of a bank is it?

A. I don't know, never played it; can't understand it; it is a game of chance, of course; they put the money on the table and I have stood by and saw them play it. I don't understand it well enough to play it. If the card they put their money on, wins of course, the man dealing had to put up the same amount—I don't understand the game of faro.

Q. It is a game of chance?

A. It is a game of chance, certainly, that I think the bank has got the better of.

Q. So the chances seem to turn their way?

A. Yes, sir.

Q. Tell the court whether during 1893, these three times you speak of, you saw Frank Trout in there engaged in these games.

(Objected to by counsel on behalf of defendant; objection overruled, to which ruling of the court defendant then and there excepted.)

A. I seen him playing poker; I don't think I saw him playing bank in April; he only played bank once that I was in the room. That was—I don't remember whether that was in June or
55 September, I seen him get up from the poker table. He had been losing; he made the remark he would try bank awhile.

Q. At all of the three times you were there tell the court whether Mr. Trout lost money to those people in the place?

A. Invariably lost, yes, sir, when I was with him.

Q. And when you saw him lose, it was in this room in the Clifford and Gassman building?

A. Yes, sir.

Q. Did you know who owned that building at the time?

A. No, sir; I knew who was running the room there; I didn't know who owned the building proper.

Q. Who was running the room?

A. Clifford and Gassman; that is, they didn't run it all the time, they were not up there all the time; Mr. Gassman was seldom up there. Mr. Clifford was out very often; a man by the name of Knisel—he was in their employ and he very often would issue the chips and Mr. Knisel would very often attend to that part of the duty; when they would go broke, they would buy more chips, and Mr. Clifford's also done the same.

Cross examination.

By Mr. PHELPS:

Q. About how many times were you up there, Mr. Heller, during this year, 1893?

A. I think I was here about three times in April and three or four times in June and four times in September.

Q. Was you up there every time you were here?

56 A. I was there every night and one afternoon in September; Mr. Trout was in with me that afternoon.

Q. What was you doing?

A. I was playing poker.

Q. How did you get in there?

A. I went into the saloon and would go to Mr. Clifford, if he was down there, and if not, to some other one that I spoke of, and they would take me up the back stairway; that is, the one leading up from the saloon.

Q. Have you unlocked the door?

A. Yes, sir.

Q. These rooms were kept locked?

A. No, the door leading up in the inside, I don't think was locked,

but the door leading from the hallway into the room, I think was locked.

Q. If the door wasn't locked, why did you have to have someone go up with you?

A. No, they wouldn't always go up with me, but sometimes; when I first went up, Mr. Clifford took me up, because I didn't know the way up into the room, the back way.

Q. Now, Mr. Heller, were you pretty well acquainted in Findlay at that time?

A. Well, I have been acquainted with the older inhabitants for the last forty years; used to live in this county; grown up in this county.

Q. Are you able to say that in 1893 and 1894, this place had the reputation of being a gambling place except among those that frequented it and played there?

A. Yes, I have heard people speak of it that never visited it.

Q. Can you tell of anyone that spoke of it that never visited it?

A. Yes, not in Findlay.

57 Q. Who was that?

A. In my place?

Q. I mean here.

A. I don't know I could here.

Q. Now, you have testified before the court that this place at that time had the reputation of being a very large gambling house?

A. They played pretty high.

Q. That reputation so far as you know was confined to the habitues of that place, people who were in the habit of going there and gambling high?

A. I rather think so; I think I had more talk coming from that source than from any outside source.

Q. Now, there was an air of secrecy about these performances there; the doors were kept locked?

A. No, I don't understand there was any secret, only there was certain parties they didn't want in there; they were excluded.

Q. The doors were kept locked against the outside so that no one came in their place unless they were acquainted with that avenue?

A. The doors leading in from the hallway; that is from Main Street hallway, I think, generally was kept locked, because I have been here when someone came for the key and they would open it, and friends would come up and rap and someone would open the door.

Q. It is not a public gambling place where the public came in and out at their pleasure; it is not that kind of a place?

A. I think it was a place that anybody could enter that wanted to gamble.

58 Re-direct examination.

By Mr. POE:

Q. Do you know how many entries they did have to it?

A. I never went in only from the place or end from the hall and the one from the inside; I understood there was another entry from the alley in the rear; I never went in that way.

Thereupon counsel on behalf of plaintiff offered in evidence the deposition of J. L. Powell, marked Exhibit "No. 2," which was read in evidence, a copy of which is in the words and figures following, to-wit:

Depositions of sundry witnesses, taken before me, a notary public of the county of Hancock, State of Ohio, in a cause pending in the common pleas court of Hancock county, State of Ohio, wherein Belle B. Trout is plaintiff and William Marvin is defendant, pursuant to the annexed notice, and at the time and place therein mentioned, to be read as evidence in behalf of the plaintiff on the trial of the aforesaid cause.

Present: John Poe, on behalf of plaintiff, and George H. Phelps, and Alfred Garber on behalf of defendant.

J. L. POWELL, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows, after statements of counsel.

Mr. Phelps objects to the taking of this deposition at this time and asks to have the taking deferred until Thursday of this week
59 on account of the necessary absence of the defendant Marvin at the burial of his sister at Auburn, Indiana, which occurs this 28th day of August, 1900.

Mr. Poe, for plaintiff, declines to postpone the taking until Thursday, for the reason only that the witness whose deposition is to be taken cannot be here at that time, and if he goes it would necessitate traveling for about 900 miles to secure the deposition.

Direct examination.

By Mr. POE:

1 Q. State your name, age, place of residence and occupation?

A. J. L. Powell, age 39, residence Grand Rapids, Minnesota, at present; occupation, bookkeeper for a lumber company.

2 Q. Are you acquainted with the parties to this suit, Belle B. Trout and William Marvin?

A. I am.

3 Q. How long have you known them?

A. I do not claim any personal acquaintance until after I came to Findlay here to do business.

4 Q. State whether or not at any time you were associated with the defendant in business, and if so, state when and what business, and where?

A. I was during the period beginning the 12th of January, 1897, and continuing about thirteen months; I would not give the exact date, but that was within a few days of it. We dealt in feed and fuel in what is known as the Marvin Opera House block, in Findlay, Ohio.

5 Q. How were you associated in business for that time
60 with the defendant?

A. How? You mean what we were engaged in?

6 Q. Whether you were partners or a corporation?

A. Well, we were in partnership in this sense; Mr. Marvin furnished the money and we divided the profits. There is a contract in existence somewhere.

7 Q. How far, during that time, was your business place from Mr. Marvin's residence, about?

A. He resided in the block, in the opera house block.

8 Q. State whether or not the defendant was in your place of business much of the time during that period?

A. Well, he called in quite frequently, would come in and sit down and talk quite often.

9 Q. State whether or not during that period you had any talk with the defendant in which he spoke of any trouble that he had, or lawsuit, with Mrs. Trout, the plaintiff, or with Frank Trout, her husband, and if so about when it occurred and what he said?

A. Yes, he told me he had had trouble with Trout.

10 Q. About when did he tell you?

A. Well, it was during the period while I was in business there, some time during the first part of our partnership deal, the first year at least.

11 Q. What did he say?

A. There was quite a bit said. He told me he had had trouble with Mr. Trout in regard to a suit then pending in court that originated from gambling. He told me the trouble between them was that he was backing Trout up, that Trout used to be in his
61 room there doing business and Trout got to gambling in the Clifford and Gassman room, and he told me he used to back Trout and he found out that Trout was gambling and he refused to back him any longer and then Trout turned around and sued him for money he had lost while gambling in Clifford and Gassman's room in his building. I don't know that he ever told me they had any other trouble, about anything else.

12 Q. What if anything did he say as to whether he knew that Frank Trout in his gambling in that room was a loser or not?

(Objected to by counsel on behalf of defendant Marvin; objection overruled in so far as it tends to show he had knowledge, to which ruling of the court defendant then and there excepted.)

A. Yes, he told me he knew Trout was losing; that he knew he neglected his business and was gambling, that sometimes he would gamble all night; he told me that.

13 Q. What if anything did he say as to his knowing that Mr. Trout had to be sent for up at that gambling place?

(Objected to by counsel on behalf of defendant; objection overruled, to which ruling of the court defendant then and there excepted.)

A. He told me that he was gambling up there and that sometimes when people came to see him they would have to send for him up here at Clifford and Gassman's; that he would be up here gambling and they would have to send for him.

14 Q. What if anything did Mr. Marvin say to you as to
62 where Trout's business place was at the time he was doing this gambling he spoke of?

(Objected to by counsel on behalf of defendant Marvin; objection overruled, to which ruling of the court defendant then and there excepted.)

A. He told me he was gambling during the period Mr. Marvin was backing him in business, or otherwise loaning him some money.

15 Q. I mean where Frank was doing business?

A. He was doing business there in his block.

16 Q. That is in the Marvin Opera House block?

A. Yes, sir.

Cross-examination.

By Mr. PHELPS:

17 Q. This talk, whatever it was, occurred during the first year that you and Marvin were partners?

A. Yes, sir.

18 Q. And that was sometime in the year 1897?

A. Yes, sir.

19 Q. Now, you had some trouble with Marvin, didn't you?

A. Not during that period, no.

20 Q. Growing out of your partnership affairs?

A. Not at that time.

21 Q. I say since then?

A. Yes, sir.

22 Q. He was to furnish the money in your business, you to do the business, and divide the profits?

A. Yes, sir.

23 Q. That was your contract?

A. Yes, sir.

63 24 Q. And he did furnish the money, did he?

A. Yes, sir.

25 Q. And you did the business?
A. Yes, sir.
26 Q. And you were in partnership about how long?
A. I cannot give you the exact date, about thirteen months as near as I can tell.
27 Q. And at the end of thirteen months you settled up, didn't you?
A. Well, we quit business.
28 Q. And you gave him your note for about $1,500.00 for your part of the losses?
A. No, I didn't.
29 Q. Didn't you give him a note?
A. Yes, but not for that amount; I don't remember the exact amount.
30 Q. Can't you tell within a thousand dollars?
A. If I remember it was eleven hundred and something.
31 Q. And that represented your share of the losses?
A. No, it represented it his way of figuring and I just gave it to get peace with him.
32 Q. You understood at the time you gave that note that that was your share of the loss in the business?
A. Yes, sir.
33 Q. And he claimed more than that?
A. Yes, he claimed various amounts. He told me if I would give him my note for that amount he would square the books and we would drop it.
34 Q. And you did that with Mr. Marvin?
A. Yes, sir; up to that time.
35 Q. During the first year of your business he talked with you frequently, did he?
A. Yes, sir.
64 36 Q. And he told you what Trout was doing over there?
A. Yes, sir.

Thereupon counsel on behalf of plaintiff offered in evidence in case No. 10796, the petition, and answer of Clifford and Gassman, also the reply of Trout, the separate answer of William Marvin, and the journal entries and judgments.

(Objected to by counsel on behalf of defendant Marvin; objection overruled, to which ruling of the court, defendant then and there excepted.)

Thereupon the above papers in case No. 10796, being the petition, and answer of Clifford and Gassman, and Marvin, also the reply of plaintiff Trout, and journal entries and judgments, were put in evidence, marked Exhibits 3, 4, 5, and 6, copies of which are in the words and figures following, to-wit:

65 EXHIBIT No. 3.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants.

Petition.

The plaintiff says the defendant, William Marvin, is, and for many years last past has been the owner of the following real estate situate in the county of Hancock and State of Ohio, and being lot number eighty-six (86) in *hte* city of Findlay, with the buildings thereon.

She says that for many years last past, including the period between March 20th, 1893, and March 19th, 1894, the defendants have been engaged in carrying on the business of gambling in certain rooms in said building on said lot No. eighty-six (86).

Between the 20th day of March, 1893, and the 19th day of March, 1894, the defendants won of Frank H. Trout, who is husband of plaintiff, at gambling in said rooms in said building on said lot, the sum of eight thousand rollars, and which sum said Frank H. Trout then and there paid to defendants as such winnings as aforesaid.

66 Said Frank H. Trout, without collusion or deceit, failed within six months from the dates of such losses and payments, by him to the defendants, to sue or prosecute with effect or at all, for the money so lost and paid, whereby a cause of action has accrued to this plaintiff for said sum of eight thousand dollars under chapter five of the Revised Statutes of the State of Ohio.

By reason of the facts aforesaid, there is due to plaintiff from the defendants the sum of eight thousand dollars.

Wherefore plaintiff asks judgment against said defendants James Clifford, Jacob Gassman and William Marvin, in said sum of eight thousand dollars.

JOHN POE,
Attorney for Plaintiff.

67 EXHIBIT No. 4.

Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 10796.

Answer of James Clifford, Jacob Gassman, and William Marvin.

Now comes the said James Clifford, and Jacob Gassman and William Marvin, and for their answer to the petition of the plaintiff, Belle B. Trout, say:—

They admit that the defendant William Marvin is the owner of the premises in the petition described, that Frank H. Trout is the husband of the plaintiff, and they deny each and every, all and singular the other allegation- of the petition.

And the said defendants further answering say: That between the 20th day of March, 1893, and the 9th day of July, 1894, there were some gambling transactions between said Frank H. Trout, and the defendants, James Clifford and Jacob Gassman, but in which transactions the defendant, William Marvin, had nothing to do, no interest therein, and no knowledge thereof.

68 That said Frank H. Trout had for many years been in the habit of gambling, and thereby winning and losing small sums of money, of which the plaintiff had full knowledge and notice.

That in said transaction the said Frank H. Trout had won and lost about equal sums of money, and about the time within the time alleged in the petition, the defendants, James Clifford and Jacob Gassman, obtained and held a check given them by said Frank H. Trout, on the Farmers' national bank, for $245.00, and said Frank H. Trout owed them cash $50.00.

That within said time the said James Clifford endorsed and presented said check to the Farmers' national bank, of Findlay, Ohio, on which it was drawn, and demanded payment thereof, which was refused. And said check was thereafter held by the said defendants, James Clifford and Jacob Gassman, until afterwards about the 8th day of July, 1894, the plaintiff herein and the said Frank H. Trout were complaining against said defendants, James Clifford and Jacob Gassman, on account of said transaction and attempted to compromise the same with said defendants, and that on or about the 9th day of July, 1894, before suit had been commenced by plaintiff, or any one else, and the said Frank H. Trout, having then the right in himself to bring said action, and with the knowledge and consent of said plaintiff, said Frank H.

Trout proposed to said defendants, James Clifford and Jacob Gassman, that if they would return to him said $50, so as aforesaid lost in money, and surrender to him the said
69 check of $245 and cancel the same, that he would settle and compromise all claims against said defendants, James Clifford and Jacob Gassman, growing out of said gambling transaction. And that the said defendants, James Clifford and Jacob Gassman, in good faith and without collusion on their part, and as they understood and believed, in good faith and without collusion on the part of said Frank H. Trout, accepted said offer, and retumed to said Frank H. Trout, said $50 cash and then and there cancelled and surrendered said check of $245, and that the said Frank H. Trout then received and accepted said cash and the cancellation of said check, in full settlement of all claims arising from said gambling transactions, and which sums more than paid all the losings of said Frank H. Trout, to these defendants, and thereby all claims against said defendants, James Clifford and Jacob Gassman, vere settled, compromised and liquidated in good faith, and thereby the said plaintiff became and is barred of all right of action against said defendants growing out of said gaming transaction.

Wherefore said defendants deny that there is anything due to said plaintiff from said defendants, or either of them, under the pretended cause of action in said petition set forth.

J. A. & E. V. BOPE,
E. T. DUNN,
ALF. GRABER,
Attorneys for Defendants.

70 EXHIBIT No. 5.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. }

Reply.

Now comes the plaintiff, Belle B. Trout, and for reply to the answer of the defendants herein filed, says:

1st. She denies that said William Marvin, defendant, had nothing to do with the gaming transactions in her petition mentioned and referred to, denies that said Marvin had no interest therein, denies that said Marvin had no knowledge thereof.

She denies that in said gaming transactions between said Frank H. Trout, and the defendants, said Trout had won and lost equal sums of money, but she says during the period in the petition set forth, to-wit, from March 20th, 1893, to March 20th, 1894, at gaming at said place with the defendants, said Frank H. Trout's losses exceeded his winnings eight thousand dollars.

She denies that she or said Frank H. Trout ever settled her
71 claim in the petition set forth or any part thereof, for $50 and the surrender of a $245 check, or for either, or at all.

She denies that defendants, or any of them, paid said Frank H. Trout or plaintiff, any money, or cancelled or delivered to her, or her said husband, any check in settlement of said claim in her petition set forth, or any part thereof, or at all. She denies that she or said Frank H. Trout, ever received from defendants, or any of them, any cash or check in settlement of said claim, or any part thereof, or at all.

Denies that she is barred at all of her right of a claim.

Denies that the losses of said Frank H. Trout did not exceed $295.00.

She says that at one time she learned that her husband had given a check on the Farmers' national bank to the defendants for $245, to pay losses at gaming with them, and she procured said bank to refuse to pay the same. She says that occurred about April 10th, 1894, and constituted no part of the losses within the period covered by her petition.

She therefore prays as in her petition she hath prayed.

JOHN POE,
Attorney for the Plaintiff.

Thereupon counsel on behalf of plaintiff put in evidence the record containing journal entries in case No. 10796, recorded in Journal 30, pages 448 and 603, and Journal 31, pages 1, 3, 16, 126, 170 and 537.

72 Counsel on behalf of defendant Marvin stated that it is conceded that this judgment is in form against Marvin as well as Clifford and Gassman. It is conceded that the circuit court reversed the judgment of the common pleas, and afterwards the defendant Marvin was dismissed out of the case.

(Defendant objected to the offering of the above journal entries on the ground that they are not competent as against William Marvin; objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon the above journal entries in case No. 10796 were read in evidence, copies of which are in the words and figures following, to wit, and are marked Exhibit No. 7.

73 EXHIBIT No. 7.

In the Court of Common Pleas.

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD ET AL., Defendants.

Certified Copy of Journal Entry.

Pleas before the Hon. C. M. Melhorn, one of the judges of the court of common pleas within and for the first subdivision of the tenth judicial district of Ohio, at the March term, A. D. 1895, of said court, began and held at the court house in Findlay within and for the county of Hancock and State of Ohio.

Be it remembered that at the January term, 1895, to-wit: January 17th, 1895, the following entry was made upon the journal of said court, to-wit:

BELLE B. TROUT, Plaintiff,
against
JAMES CLIFFORD ET AL., Defendants. } No. 10796. 30–448.

On motion and application of the defendants this cause is continued to the next term of this court, and at the costs of said defendants. It is therefore considered that the defendants pay the costs of this continuance for which execution is awarded.

74 And afterwards, to-wit, at the March term, 1895, to-wit, March 19th, 1895, the following order was made upon the journal of said court, to-wit:

BELLE B. TROUT, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 10796. 30–603.

This day came the parties with their attorneys, also came the following named persons as jurors, to-wit: Jacob Kempher, George W. Robinson, Joseph Crites, Frank L. Fenstermaker, Smith H. Hoy, Cyrus Dillinger, George Wisely, John Beagle, S. C. Groves, Robert Bonham, Michael Palmer and William Edwards, who were duly impaneled and sworn according to law, and this cause came on and was heard upon the pleadings and evidence, and the jury having heard the evidence in part, and the hour of adjournment having arrived, court adjourned until tomorrow morning at 8:30 o'clock.

And afterwards, to-wit, at the March term, 1895, to-wit, March 20th, 1895, the following entry was made upon the journal of said court, to-wit:

BELLE B. TROUT, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 10796. 31-1.

75 This day came the said parties with their attorneys, and also came the jury hereinbefore impaneled and sworn in this case, and the trial proceeded, and the said jury having heard the remainder of the evidence, arguments of counsel and charge of the court, retired to their room in charge of the sheriff for deliberation, and the hour of *judgment* having arrived, the court excused the jury until tomorrow morning at 8:30 o'clock.

And afterwards, to-wit, at the March term, A. D. 1895, to-wit, March 21st, 1895, the following entry was made upon the journal of said court, to-wit:

BELLE B. TROUT, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 10796. 31-3.

This day again came the parties with their attorneys, also came the jury heretofore impaneled and sworn in this case, and the jury again retired to their room for further deliberation. And now comes said jury into open court with their verdict in writing signed by their foreman, and say,

"We, the jury, being duly impaneled and sworn, find the issues in this case in favor of the plaintiff, and assess the amount due to the plaintiff from the defendants at the sum of $3,473.00, thirty-four hundred and seventy-three dollars.

M. C. PALMER, *Foreman.*"

76 And afterwards, at the March term, 1895, to-wit, May 2, 1895, the following entry was made upon the journal of said court, to-wit:

BELLE B. TROUT, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, and William Marvin, Defendants. } No. 10796. 31-126.

This day again came the said parties with their attorneys, and thereupon this cause came on and was heard upon the motions of

said defendants, James Clifford, Jacob Gassman and William Marvin, to set aside the verdict hereinbefore rendered in this case, and to grant a new trial herein and was argued by counsel. Upon consideration whereof it is ordered that said motions, and each of them, be, and they hereby are, overruled, and refused. To which order overruling said motions for a new trial, the defendants at the time excepted and here now except, and thereupon plaintiff moved for judgment upon the verdict, which motion is granted by the court. It is therefore adjudged that the said plaintiff, Belle B. Trout, recover from the defendants, James Clifford, Jacob Gassman and William Marvin, the said sum of three thousand four hundred and seventy-three dollars ($3,473.00) aforesaid, and also her costs herein taxed at $—. And it is further ordered that the said defendants pay the costs by them made in this action to be taxed, and
77 in default thereof, that an execution issue therefor. To all which the defendants at the time excepted, and here now except, and the court ordered the docket in this case left open 50 days for the defendants to prepare and have signed a bill of exceptions herein.

And afterwards on this 23rd day of May, 1895, the following order was made upon the journal of said court, to-wit:"

BELLE B. TROUT, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, and William Marvin, Defendants. } No. 10796. 31–170.

Now on this 23rd day of May, A. D. 1895, came the said defendants, James Clifford, Jacob Gassman and William Marvin, and the said William Marvin, for himself and in his own behalf, with their attorneys, and presented to the court their certain bill of exceptions herein, which being found by the court to be true, is allowed, and signed and sealed, and on motion, is hereby made a part of the record in this case, but not spread at large upon the journal.

LOUIS P. JULIEN.

78 JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Plaintiffs in Error,
vs.
BELLE B. TROUT, Defendant in Error.

This cause at a former day of this term came on for hearing upon the petition in error, the transcript and original papers and pleadings from the court of common pleas, of Hancock county, and was argued by counsel. On consideration, the court on this 14th day of December, 1895, find that as to the plaintiffs in error, James Clifford and Jacob Gassman, there is no error apparent upon the record in said proceedings and judgment.

The court further find that as to the plaintiff in error, William Marvin, there is error apparent upon the record to the prejudice of said plaintiff in error, William Marvin, in this, to-wit: First, that as to said William Marvin the evidence is not sufficient to sustain the allegations of the petition, and the verdict as to him is not sustained by sufficient evidence. It is therefore considered by the court that the judgment aforesaid as to the said James Clifford and Jacob Gassman be, and the same hereby is affirmed, and that the defendant in error recover from the said James Clifford and Jacob Gassman her costs herein expended, taxed at $—. It is further considered by the court that the judgment aforesaid as to the plaintiff in error,
William Marvin, be, and the same hereby is, reversed, the
79 motion for a new trial is granted, the verdict set aside and a new trial ordered. And as to the said William Marvin, this case is remanded to the court of common pleas for a new trial, and that a special mandate be sent to the said court to carry this judgment into execution, and as to said judgment against the said James Clifford and Jacob Gassman so by the court affirmed, it is ordered that a special mandate be sent to the common pleas court of Hancock county, for execution upon said judgment. To all of which the plaintiffs in error, James Clifford and Jacob Gassman, duly excepted, and here now except.

I, Louis P. Julien, clerk of the circuit court of Hancock county, Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said circuit court.

Witness my hand and the seal thereof, at Findlay, this 25th day of January, A. D. 1896.

[SEAL.]

LOUIS P. JULIEN, *Clerk*,
By PRESLEY E. HAY, *Deputy*.

Counsel on behalf of defendant, William Marvin, admitted in open court that the signatures to the answer of Clifford and Gassman, and the signature of Marvin to the answer are the genuine signatures of these persons.

Thereupon counsel on behalf of plaintiff offered in evidence the papers in case number 11138, consisting of a petition, answer and separate answer of William Marvin, which papers were put in evidence, marked Exhibits 8, 9, 10 and 11 copies of which are in the words and figures following, to-wit:

80 EXHIBIT No. 8.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

BELLE V. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants.

Petition.

The plaintiff says that William Marvin is, and for many years last past has been the owner of the following real estate situate in the county of Hancock, and State of Ohio, and being lot number eighty-six (86), in the city of Findlay, with the buildings thereon.

She says that for many years last past, including the period between March 19th, 1894, and June 19th, 1894, the defendants have been engaged in carrying on the business of gaming in certain rooms in said buildings on said lot No. 86.

Between the 19th day of March, 1394, and the 19th day of June, 1894, the defendants won of Frank H. Trout, who is husband of plaintiff, at gaming in said rooms in said building on said lot, the sum of twenty-two hundred dollars, and which sum said Frank H. Trout then and there paid to defendants as such winnings as aforesaid.

81 Said Frank H. Trout, without collusion or deceit, failed within six months from the dates of such losses and payments, by him to the defendants, to sue or prosecute with effect or at all, for the money so lost and paid, whereby a cause of action has accrued to this plaintiff for said sum of twenty-two hundred dollars under chapter five, title five, of the Revised Statutes of the State of Ohio.

By reason of the facts aforesaid, there is due to plaintiff from the defendants the sum of twenty-two hundred dollars.

Wherefore plaintiff asks judgment against said defendants, James Clifford, Jacob Gassman and William Marvin in said sum of twenty-two hundred dollars.

JOHN POE,
Attorney for Plaintiff.

82

EXHIBIT No. 9.

Court of Common Pleas, Hancock County, Ohio.

BELLE V. TROUT
vs.
JAMES CLIFFORD ET AL.

Separate Answer of William Marvin.

And now comes William Marvin, one of the defendants, and for his answer to the petition of the plaintiff, admits that he is the owner of the premises described in the petition and further as to said petition, this answering defendant denies the same and each and every allegation thereof.

J. A. & E. V. BOPE,
GEORGE H. PHELPS,
ALFRED GRABER,
E. T. DUNN,
Attorneys for William Marvin.

83

EXHIBIT No. 10.

Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 11138.

Separate Answer of James Clifford and Jacob Gassman.

Now comes the defendants James Clifford and Jacob Gassman, and for their answer to the petition of the plaintiff, Belle B. Trout, say:

That they admit that William Marvin is the owner of the property in the petition described; that the plaintiff is the wife of Frank H. Trout; that said Frank H. Trout has not prosecuted with effect or at all, any claim against these defendants during the time mentioned in the petition.

They deny each and every all and singular the allegations of said petition.

JAMES CLIFFORD AND
JACOB GASSMAN,
By BOPE & DUNN ET. AL., *Att'ys.*

84 EXHIBIT No. 11.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

BELLE B. TROUT, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 11138.

Amendment to Petition.

Now comes the plaintiff, Belle B. Trout, and leave of the court first had and obtained, amends her petition herein by adding thereto the averments following, to-wit:

She says if the said William Marvin did not in person, engage in said gaming transactions in her petition herein set forth, and in which her said husband lost said money as in her petition set forth, said William Marvin is jointly liable therefor with said other defendants herein, for she says said Marvin so owning said lot and building and room in which said gambling was done, knowingly permitted the same to be occupied and used by said other defendants for gaming and lottery purposes for many years prior thereto, and during the period set forth in her petition herein, within which her said husband so lost to defendants said sum of twenty-two hundred dollars, and failed immediately or at all to prosecute in good faith, or at all, any action or proceeding for the recovery of
85 the said premises, or to prevent the use of the same by said other defendants for said purpose, so that said defendant William Marvin is and was a principal with said other defendants in carrying on said business of gaming in said rooms in said building for the period in her petition set forth in which said money was so lost by her husband therein.

And she prays judgment against the defendants as in her petition herein she hath prayed.

JOHN POE,
Att'y for Plaintiff.

EXHIBIT No. 12.

Journal Entry.

Thereupon counsel on behalf of plaintiff offered in evidence, the journal entry in said case No. 11,138, as found in Journal 23, page 392, which is put in evidence and marked Exhibit 12, a copy of which is in the words and figures following, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD and JACOB GASSMAN, Defendants.

This 21st day of September, 1896, came the said parties with their attorneys and the cause was dismissed as to William Marvin without prejudice, and thereupon a jury to-wit: J. F. Harvey, William
86 C. Shull, Lafayette Hull, S. F. Leeder, Sylvester Severs, Robert Cooper, Jacob Greesley, John Whistler, Herman Roggie, S. F. Hagerman, John C. Mitchell and William Compton was duly impaneled and sworn well and truly to try the issues joined between the said parties.

Thereupon the said jury after hearing the testimony of the witnesses, the argument of counsel and charge of the court in the case, upon their said oaths said that they found that the said defendants James Clifford and Jacob Gassman are guilty as the said plaintiff Belle B. Trout has in her petition in this case complained of against them, and that they assessed the damages of the said plaintiff at the sum of thirteen hundred dollars ($1,300).

It is therefore adjudged that the said plaintiff recover from the said defendants James Clifford and Jacob Gassman the said sum of $1,300 aforesaid and also her costs herein taxed at $—, and it is further ordered that the said defendants Clifford and Gassman pay the costs by them made in this action to be taxed and in default thereof, that an execution issue therefor.

Thereupon counsel on behalf of plaintiff offered in evidence the papers in case No. 10,093, being the case of Martha Myers, plaintiff, vs. Clifford and Gassman, and Ancil Marvin and William Marvin, filed in the court of common pleas in October, 1893.

(Objected to by counsel on behalf of defendant William Marvin. Counsel on behalf of plaintiff stated that the above papers are
87 offered in evidence for the purpose of showing that on the 28th day of October, 1893, on the question of notice.)

That these people were carrying on this business there on the 28th of October, 1893, and that Martha A. Myers sued Clifford and Gassman, and sued with them, William Marvin, this defendant, and also his brother, for $1.000.

(Objected to by counsel on behalf of defendant; objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon the petition and answer in the above mentioned case No. 10,093 were put in evidence and marked Exhibits 13 and 14, copies of which are in the words and figures following to-wit:

88 EXHIBIT No. 13.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

MARTHA A. MYERS, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, ANCIL E. MARVIN, and WILLIAM MARVIN, Defendants.

Petition.

The plaintiff is the wife of Luther M. Myers and the mother of his three small children, and that she and her said children are wholly dependent upon her said husband for support.

That defendants Ancil E. Marvin and William Marvin own lots eighty-five (85) and eighty-six (86) in the city of Findlay with the buildings thereon and have so owned the same for more than three years last past, parts of which buildings they have for said period had leased to the defendants, James Clifford and Jacob Gassman, for gaming and gambling purposes, and which said Marvin, for all said period, knowingly permitted to be used by said Clifford and Gassman for gaming purposes, and for all said time failed in good faith or at all to prosecute any action or proceedings for the recovery of said premises from said defendants, lessees thereof.

She says from April 1st, 1892, to April 24th, 1893, the de-
89 fendants were so conducting and keeping on said premises gambling rooms with the usual personal property and gambling devices used in gambling and gaming and playing games of chance. That from April 1st, 1892, to April 24th, 1893, the said Luther M. Myers lost at gambling with the defendants in said rooms in playing with defendants at games of chance, the sum of one thousand dollars, which as so lost he paid to the defendants. That more than six months elapsed after said money had been so lost and paid and yet said Luther M. Myers has failed without collusion with plaintiff or any one else and without deceit to sue for or prosecute with effect or at all for said money so lost and paid the defendants.

By reason of the facts aforesaid the defendants are indebted to plaintiff in the sum of one thousand dollars received by defendants won of plaintiff's said husband at gaming, and by him paid to defendants whereby an action accrued to plaintiff's said husband under the statute against gaming and which action he so neglected and failed for six months to prosecute, whereby this plaintiff is entitled under said statute to bring this action therefor, and plaintiff

therefore prays judgment against the defendants for said sum of one thousand dollars with interest from April 24th, 1893.

JOHN POE,
Attorney for Plaintiff."

90 EXHIBIT No. 14.

In the Court of Common Pleas, Hancock County, Ohio.

MARTHA A. MYERS, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, ANCIL E. MARVIN, and WILLIAM MARVIN, Defendants.

Separate Answer of James Clifford and Jacob Gassman.

The defendants, James Clifford and Jacob Gassman now come and for their answer in the cause say: That they admit that the plaintiff, Martha A. Myers, is the wife of Luther M. Myers, but as to whether she is the mother of three small children they do not know.

They deny that they have ever rented any building or property from Ancil E. Marvin, but they say that they are the tenants of William Marvin, and have rented from him and are now in possession of a building situate on lot number eighty-six (86) in said city of Findlay, Ohio. and have rented and have been in the possession of the same for a number of years last past.

They deny that they or either of them have rented or leased the same from the said William Marvin or any other person for the purpose of gambling or for gaming purposes as is alleged in
91 said petition. Deny that Luther M. Myers ever lost anything at gambling in or on their said premises. Deny that they or either of them ever played with or won any money or thing of value from said Luther M. Myers. Deny that said Luther M. Myers lost in gaming with them or any other person upon their premises, the sum of one thousand dollars or any other sum.

Deny that they or either of them are indebted to plaintiff in the sum of one thousand dollars or any other sum.

Deny that plaintiff has any cause of action against them or either of them.

And they deny each and every allegation in said petition, other than that plaintiff is the wife of Luther M. Myers, and they pray that they may go hence without day, and recover their costs herein.

MEEHAN & JORDAN,
Attorneys for Defendants."

Thereupon counsel on behalf of plaintiff, offered in evidence the summons and return in the same case No. 10093.

(Objected to by counsel on behalf of defendant, William Marvin, objection overruled to which ruling of the court, defendant then and there excepted.)

92 EXHIBIT No. 15.

Summons.

Thereupon the summons in case No. 10093 was put in evidence, and marked Exhibit 15, a copy of which is in the words and figures following, to wit:—

"THE STATE OF OHIO, } ss:
Hancock County, }

To the sheriff of Hancock county, Greeting:

You are commanded to notify James Clifford, Jacob Gassman, Ancil E. Marvin and William Marvin that they have been sued by Martha A. Myers in the court of common pleas of Hancock county, and that unless they answer by the 25th day of November, A. D., 1893, the petition of the said plaintiff against them filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 6th day of November, A. D., 1893.

Witness my signature as clerk of said court, and the seal thereof at Findlay, this 28th day of October, A. D., 1893.

LOUIS P. JULIEN, *Clerk,*"
By J. W. DAVIDSON, *Deputy.*

"THE STATE OF OHIO, } ss:
Hancock County, }

93 I received this writ October 28th, 1893. In obedience to the command thereof, I, on the 30th day of October, 1893, notified the within named James Clifford, Jacob Gassman, Ancil E. Marvin and William Marvin, by delivery to each of them personally a true and certified copy thereof with all the endorsements thereon.

JOS. T. BARTOON, *Sheriff,*
By ELI PUTNAM, *Deputy.*

Returnable November 6th, 1893. Summons in action for amount claimed $1,000, with interest from April 24th, 1893.

Filed Nov. 4th, 1893.

LOUIS P. JULIEN, *Clerk.*"

Thereupon counsel on behalf of plaintiff offered in evidence in the same case No. 10093, a demurrer filed by Mr. Marvin to the petition, which was read in evidence and marked Exhibit 16, a copy of which is in the words and figures following, to-wit:

94 EXHIBIT No. 16.

Court of Common Pleas, Hancock County, Ohio.

"MARTHA A. MYERS, Plaintiff,
against
JAMES CLIFFORD, JACOB GASSMAN, ANCIL E. MARVIN, and William Marvin, Defendants. } No. 10093.

Demurrer.

Now comes the said defendants, Ancil E. Marvin and William Marvin and demur to the petition of the plaintiff because they are improperly joined as defendants with the said James Clifford and Jacob Gassman.

These defendants therefore pray that because of said misjoinder, that they be dismissed from this action with their costs.

ALFRED GRABER,
Attorney for Ancil E. Marvin and William Marvin."

95 *Journal Entry.*

Thereupon counsel on behalf of plaintiff offered in evidence a journal entry found in Journal 29 at page 485 of the common pleas court, showing the disposal of this case, which was read in evidence and marked Exhibit 17, a copy of which is in the words and figures following, to-wit:

EXHIBIT No. 17.

"MARTHA A. MYERS, Plaintiff,
vs.
JAMES A. CLIFFORD ET AL., Defendants.

By agreement of parties, this cause is settled at defendants' costs. It is therefore considered that the defendants pay the costs herein made and in default thereof that execution issue therefor.

MARTHA A. MYERS.
CLIFFORD AND GASSMAN."

Thereupon counsel on behalf of plaintiff stated that he wished to offer the papers in case No. 7412 in the common pleas court, (the petition was filed in 1891), being an action in which Charlotte Carlin sued Clifford and Gassman while they were in this building for $10,000, for the purpose of showing that it was a gambling case and that Marvin signed notes to help them out.

96 (Objected to by counsel on behalf of defendant Marvin; defendant's counsel stated that defendant Marvin had no knowledge what this suit was about and that knowledge cannot be proven by the introduction of these papers; they establish nothing.)

Counsel on behalf of plaintiff thereupon offered in evidence all the papers in case No. 7412, being the petition, amended petition answers and replies, also the journal entries.

(Objected to by counsel on behalf of defendant Marvin; objection overruled, exceptions by defendant.)

Thereupon defendants' counsel admitted that Charlotte Carlin sued these men for money alleged to have been lost there, and got a judgment for $3,000 at whatever date these papers show the judgment was obtained; it is also admitted that Marvin did sign a note, not admitting that the note was given in settlement in the case; not admitting that Marvin knew what the suit was for.

Defendants' counsel also admitted that the suit was against his (Marvin's) tenants, and that they occupied these same premises, and that for a period of time, two or three or four years before this action. It is also admitted by all parties hereto, that the time mentioned in the petition in the above mentioned case No. 7412 three years preceding 1890, was within the time covered by these papers offered.

Thereupon said above mentioned papers, being the petition, answer, amended petition, replies and journal entries, were read in
97 evidence and marked Exhibits 18, 19, 20, 21, 22, 23, 24, 25, copies of which are in the words and figures following, to-wit:

EXHIBIT No. 18.

Court of Common Pleas, Hancock County, Ohio.

"CHARLOTTE F. CARLIN, Plaintiff,
vs.
CLIFFORD & GASSMAN, JAMES W. CLIFFORD, and JACOB GASSMAN, Defendants.

Petition.

The defendants, Clifford & Gassman, are a copartnership firm by the name and style above indicated, formed for the purpose of doing business in the State of Ohio but not incorporated.

This plaintiff is the wife of one Gage Carlin, a resident of the city of Findlay, Ohio.

That at all time herein stated the said defendants, in violation of law and against the form and prohibition of the statute in such case made and provided have run and conducted a gambling room or rooms in a building by them rented and especially fitted for the purpose in a building known as the Marvin block on the east side

of Main street in the said city of Findlay, Ohio, wherein they, the said defendants with their clubs, dealers, associates, employees and assistants, have gambled and played and conducted games
98 for money and property by means of a faro bank (so called) and other unlawful gambling devices and appliances by the said defendants in said rooms for that purpose kept and maintained.

That within the three years last preceding the 1st day of August, 1890, to-wit, being August 1st, 1887, and August 1st, 1890, the said Gage Carlin, husband of this plaintiff aforesaid, while gambling with the said defendants at and in their said gambling rooms, has lost and paid to the said defendants and their said agents, dealers, assistants and associates in said gambling enterprise, and the said defendants have by themselves and their said dealers and assistants won and received of and from the said Gage Carlin and converted and appropriated to their own use by means of said unlawful game of faro and other gambling games as aforesaid at divers times within the period aforesaid, and in divers sums, over fifteen thousand dollars in the aggregate whereby a just claim and cause of action for that sum accrued to the said Gage Carlin against the said defendants under the statute of Ohio in such case made and provided.

And this plaintiff further alleges that the said Gage Carlin did not within six months after the said 1st day of August, 1890 (without collusion or deceit) sue and with effect prosecute the defendants for the money so as aforesaid lost and paid to them as herein above stated and set forth whereby a cause of action therefor accrued to this plaintiff under the provisions of section 4273 of the Revised Statutes of Ohio.

Wherefore this plaintiff prays judgment against the said
99 defendants for fifteen thousand dollars with interest thereon from the 1st day of August, 1890.

CHARLOTTE F. CARLIN,
By GEORGE H. PHELPS AND
JASON BLACKFORD,
Attorneys."

EXHIBIT No. 19.

In the Court of Common Pleas, Hancock County, Ohio.

"CHARLOTTE F. CARLIN, Plaintiff,
against
JAMES H. CLIFFORD and JACOB W. GASSMAN, Defendants.

Amended Petition.

The plaintiff comes and on leave given by the court files her amended petition, and for cause of action against the defendant says:

1st. Plaintiff is now and for several years has been the wife of Gage Carlin, and residing in the city of Findlay, Ohio.

The defendants, James H. Clifford and Jacob W. Gassman, as partners under the firm name of Clifford & Gassman, for more than two years last past have carried on business in the city of Findlay, in said county, in a building known as the Marvin block, as the keepers of a restaurant and saloon, and in connection with
100 said business, in certain rooms in said building, they placed and operated certain gaming and gambling devices, to illegally gamble and play certain games upon wagers and bets, that for and during all of said time defendants, by themselves, their agents and employees at said place, carried on the game of faro, poker, and other gambling games, betting and winning money thereby.

The plaintiff further says. More than six months before the commencement of this action, and between the 1st day of August, A. D., 1887, and the first day of August, A. D., 1890, said defendants at their said gaming rooms, at different times between said dates won from said Gage Carlin, at the games of faro, poker, and other gambling games and games of chance, over and above the several sums won by said Carlin, the sum of ten thousand dollars, which said sum of ten thousand dollars in all said Gage Carlin, in various sums, and as said sums were played and won by defendants, were paid to defendants by said Gage Carlin, and converted by defendants to their own use.

Plaintiff cannot state the several dates of playing at such games, nor the amounts so won by the defendants and paid to them, by the said Gage Carlin, between said 1st day of August, 1887, and the 1st day of August, 1890, but avers that the total amount so lost and paid above the amount won by said Carlin is $10,000.

The said Gage Carlin has wholly failed for the period of more than six months, after the time of such losses, without collu-
101 sion or deceit, or at all, to sue and with effect to prosecute for the recovery of said money; wherefore the plaintiff sues to recover the same for her own use.

Plaintiff says that by reason of the facts above stated, defendants are indebted to plaintiff in the sum of ten thousand dollars ($10,000) the money so lost by said Gage Carlin, and paid by him to defendants.

Plaintiff says further that by reason of said losses and moneys so paid to defendants by her said husband, she has been greatly injured in her means of support, and lost the support heretofore given her by her said husband.

The plaintiff therefore asks judgment against the said defendants for said sum of ten thousand dollars ($10,000) with interest from August 1st, 1890, and for all proper relief.

GEORGE H. PHELPS AND
JASON BLACKFORD,
Attorneys for Plaintiff."

102 EXHIBIT No. 20.

In the Court of Common Pleas within and for the County of Hancock and State of Ohio.

"CHARLOTTE F. CARLIN, Plaintiff,
vs.
CLIFFORD & GASSMAN, JAMES W. CLIFFORD, and JACOB GASSMAN, Defendants.

Second Amended Petition.

And now comes Charlotte F. Carlin, the plaintiff, and for her amended petition (leave of court being first given), says:

The defendants, Clifford & Gassman, are a co-partnership firm by the name and style above indicated, formed for the purpose of doing business in the State of Ohio, but not incorporated.

This plaintiff is the wife of one Gage Carlin, a resident of the city of Findlay, Ohio.

That, at all the time herein stated the said defendants in violation of law and against the form and prohibition of the statute in such case made and provided, have run and conducted a gambling room or rooms in a building by them rented and especially fitted for the purpose in a building known as the Marvin block on the east
103 side of Main street, in the said city of Findlay, Ohio, wherein they, the said defendants, with their clerks, dealers, associates, employees and assistants have gambled and played and conducted games for money and property by means of a faro bank (so called) and other unlawful gambling devices and appliances by the said defendants in said rooms for that purpose kept and maintained.

That within the eighteen months last preceding the 6th day of February, 1891, to-wit: between August 6th, 1889, and August 6th, 1890, the said Gage Carlin, husband of this plaintiff aforesaid, while gambling with the said defendants at and in their said gambling rooms has lost and paid to the said defendants and their said agents, dealers, assistants and associates in said gambling enterprise, and they the said defendants have by themselves and their said dealers and assistants won and received of and from the said Gage Carlin, and converted and appropriated to their own use by means of said unlawful game of faro and other gambling games as aforesaid at divers times within the period aforesaid and in divers sums about $13,000 in the aggregate whereby a just claim and cause of action for that sum accrued to the said Gage Carlin against the said defendants under the statute of Ohio, in such case made and provided.

And this plaintiff further alleges that, the said Gage Carlin did not within six months after the said 1st day of August, 1890 (without collusion or deceit), sue and with effect prosecute the defendants

for the money so as aforesaid lost and paid to them as herein above stated and set forth whereby a cause of action therefor accrued
104 to this plaintiff under the provisions of section 4273 of the Revised Statutes of Ohio.

Wherefore this plaintiff prays judgment against the defendants for $13,000 with interest thereon from the 6th day of August, 1890.

CHARLOTTE F. CARLIN,
By GEORGE H. PHELPS,
Her Attorney."

105 EXHIBIT No. 21.

Court of Common Pleas, Hancock County, Ohio.

"CHARLOTTE F. CARLIN, Plaintiff,
against
CLIFFORD AND GASSMAN, JAMES H. CLIFFORD, and JACOB W. GASSMAN, Defendants.

Answer.

Now comes the said Clifford & Gassman, James H. Clifford and Jacob W. Gassman, defendants, and for their answer to the amended petition filed in this case on the 24th day of June, 1891, say: That they admit that said James H. Clifford and Jacob W. Gassman are partners under the firm name of Clifford & Gassman, and they admit that said Charlotte F. Carlin is the wife of said Gage Carlin, but deny that said parties are residents of the city of Findlay, Ohio. Said defendants deny that said defendants won from said Gage Carlin between the 6th day of August, 1889, and the 6th day of August, 1890, the sum of thirteen thousand dollars ($13,000) or about that sum in any game whatever; and deny that said Gage Carlin paid said sum to said defendants in any game whatever within said time.

106 The following averment in said petition of said plaintiff is denied by said defendants, to-wit:

'That at all times herein stated the said defendants, in violation of law and against the form and prohibition of the statute in such case made and provided, have run and conducted a gambling room or rooms in a building by them rented and especially fitted for the purpose in a building known as the Marvin block on the east side of Main street in the said city of Findlay, Ohio, where they the said defendants with their clerks, dealers, associates, employees and assistants, have gambled and played and conducted games for money and property by means of a faro bank (so called) and other unlawful gambling devices and appliances by the said defendants in said rooms for that purpose kept and maintained.'

Said defendants further say that between the 6th day of August,

1889, and the 7th day of January, 1891, there were certain gaming transactions between said Gage Carlin and said defendants, in which said Gage Carlin lost and paid to said defendants the sum of twenty-seven hundred dollars ($2,700); and said defendants as a part of the same transaction delivered said sum of twenty-seven hundred dollars ($2,700) from time to time to said Gage Carlin as he lost the same and took his promissory notes therefor and along for about a month before the 7th day of January, 1891, said plaintiff was complaining against said defendants as to the said games and transactions and was attempting to compromise the same with said
107 defendants; and that said Gage Carlin also on his part made some complaint to defendants concerning said game and transactions and said money so by him lost and which he had so received back and given his notes therefor; and on said 7th day of January, 1891, no suit then having been commenced by plaintiff or any one else, and said Gage Carlin having the right in himself to bring said action and with the knowledge and consent of said plaintiff said Gage Carlin proposed to said defendants that if they would surrender his said notes for the sum of twenty-seven hundred dollars ($2,700) to him, and pay him the additional sum of five hundred dollars ($500) in cash, that he would settle and compromise all claims against said defendants growing out of said gaming transaction; and that said defendants in good faith and without collusion on their part, and as they understood it, in good faith and without collusion on the part of the said Gage Carlin, accepted said offer and returned to said Gage Carlin said twenty-seven hundred dollars ($2,700) of promissory notes so held against him and paid to him said sum of five hundred dollars ($500) in cash, and said Gage Carlin received and accepted said promissory notes and said sum of five hundred dollars ($500) in full settlement of all claims arising from said gaming transactions, and thereby all claims against said defendants were settled, compromised and liquidated in good faith; thereby said plaintiff is barred of all right of action against said defendants growing out of said gaming transactions. And said defend-
108 ants deny that said plaintiff at the time of commencing this action or since has had any cause of action against said defendants for any sum whatever; and deny that there is anything due to said plaintiff from said defendants under the pretended cause of action in the petition set forth.

Afterwards on or about the 8th or 9th of January, 1891, and after said gaming transactions were all settled and compromised as aforesaid, said plaintiff and said Gage Carlin acting in collusion and for the purpose of still further mulching these said defendants and to get rid of said settlement and compromise so made in good faith, said Gage Carlin made his three promissory notes payable to the order of Abner L. Davis or bearer, one for the sum of one thousand dollars ($1,000) at six months, one for the sum of eleven hundred dollars ($1,100) at eighteen months, and one for the sum of eleven hundred dollars ($1,100) at two years, and placed the same in an envelope and

securely sealed the same and asked said defendants to place the same in their safe, which they did; and in a few days thereafter said Gage Carlin absconded and left the country and remained away until within the last month when he returned; that after said notes had been so delivered to said defendants, by being so placed in their safe and long after said Gage Carlin had so absconded and said plaintiff had commenced this action, said defendants opened said envelope and found therein to their surprise said notes so payable to said Abner L. Davis or bearer, and they still have said notes
109 in their possession, but they have no claim to the same; and now bring the same into court to be surrendered to said Gage Carlin or to any one else as he may direct; and they aver that said notes were so poked in upon them, by said Gage Carlin in bad faith, and in collusion with said plaintiff for the purpose of getting rid of said compromise and settlement, which had been made before that time.

Wherefore defendants pray that this action be dismissed and that they recover their costs.

BURKET & BURKET,
E. T. DUNN, &
A. ZUGSCHWERT,
Defendants' Att'ys."

EXHIBIT No. 22.

"CHARLOTTE F. CARLIN
vs.
CLIFFORD & GASSMAN ET AL.

Reply.

And for her reply to the answer of the defendants, the plaintiff denies the same, and each and every allegation thereof except in so far as said answer admits the averments and allegations of the plaintiff's amended petition and the plaintiff prays judgment as in her amended petition.

GEORGE H. PHELPS,
Att'y for Plaintiff."

110 EXHIBIT No. 25.

"CHARLOTTE F. CARLIN, Plaintiff,
vs.
CLIFFORD & GASSMAN, JAMES H. CLIFFORD, and JACOB GASSMAN, Defendants.

Consolidated case No. 7412.

This day came the said Charlotte F. Carlin, plaintiff, with her attorney, and also came the said Clifford & Gassman, James H.

Clifford and Jacob W. Gassman, defendants, with their attorneys, and thereupon came a jury, towit:

Who being duly impaneled and sworn according to law, and said cause having been tried and submitted to the jury, said jury on their said oaths say, that they find for the said plaintiff and assess her damages in said consolidated case against said defendants at the sum of three thousand dollars. Therefore said defendants waived all motions for a new trial and it is therefore considered that said plaintiff recover against said defendants said sum of three thousand dollars, her damages so assessed, together with her costs in and about this suit expended taxed at $—."

Thereupon counsel on behalf of plaintiff offered in evidence Journal 29, pages 260 and 261, showing judgments.

111 (Objected to by counsel on behalf of defendant. Defendant's counsel stated that the note William Marvin signed was for $2,000, to assist these men in settling that case; that is the use they made of it, but the defendant does not admit that they were intending to use the note for paying the debt.)

Thereupon counsel on behalf of plaintiff offered in evidence Journal 23, pages 116 and 117, for the purpose of showing that James Clifford was indicted on January 31st, 1891, on the charge of keeping and exhibiting a game of "faro bank" while he was in this same building.

(Objected to by counsel on behalf of defendant, William Marvin.) Plaintiff's counsel stated that it was the only gambling place Clifford & Gassman kept, and stated that plaintiff would show by subsequent cases that they were both indicted at the same time under two indictments apiece, then would follow it up with proof that this is where that was done.

(Objected to by counsel on behalf of defendant, William Marvin.) Thereupon the court overruled the motion only on the ground that it tends to show knowledge, to which ruling of the court, defendant then and there excepted.

Thereupon the said entry on pages 116 and 117 of the Journal was read in evidence and marked Exhibit 26, a copy of which is in the words and figures following, towit:

112 EXHIBIT No. 26.

Grand Jury Report.

SATURDAY, *Jan'y* 31, 1891, *Sixth Day of January* —.

In the matter of the report of the grand jury witnesses.

This day came the following named persons towit: Z. T. Darrow, E. T. Dunn, J. P. Crone, David Joy, W. E. Heck, Y. Bickham, J. A. Vail, L. A. Cross, Frank Alspach, Chas. B. Hall, Z. T. Darrow, J. H.

Winbush, John M. Barr, W. L. Carlin, J. M. Henninger, who were in open court duly sworn and sent to testify before the grand jury.

In the matter of the report of the grand jury.

This day appeared at the bar of this court, the grand jury heretofore impaneled and sworn in and for the body of the county, aforesaid, viz: Harrison A. Andrews, David L. Hilty, Lewis Runkle, Michael Bolwiler, Lycurgus Thurston, B. A. Foster, Henry Smith, George W. Franks, David Downing, F. M. Case, Frank Behm, Simeon Karn, Jacob Radabaugh, Oscar Sampson, Philip B. Kelly, and presented to the court through their foreman, Harrison A. Andrews, the following report, towit:

'And also their certain other bill of indictment against James Clifford for "keeping a room to be used for gambling" indorsed "A true bill," Harrison A. Andrews, foreman of the grand jury.'

113 'And also their certain other bill of indictment against James Clifford for "keeping and exhibiting for gain a faro bank," indorsed "A true bill, Harrison A. Andrews, foreman of the grand jury.'"

Thereupon counsel on behalf of plaintiff offered in evidence Journal 23, pages 116 and 138 for the purpose of showing that Jacob Gassman was indicted on January 31st, 1891, on the charge of keeping a room or rooms used for gambling while he was in this building.

(Objected to by counsel on behalf of defendant, Marvin, objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon said entry Journal 23, pages 116 and 138 were read in evidence and marked Exhibit 27, copies of which are in the words and figures following:

EXHIBIT No. 27.

Grand Jury Report.

"SATURDAY, *Jan'y* 31, 1891, *Sixth Day of January* —.

In the matter of the report of the grand jury witnesses:

This day came the following named persons, towit: Z. T. Darrow, E. T. Dunn, J. P. Crone, David Joy, W. E. Heck, Y. Bickham, J. A. Vail, L. A. Cross, Frank Alspach, Chas. E. Hall, Z. T. Darrow, J. H.

114 Winbush, John M. Barr, W. L. Carlin, J. M. Henninger, who were in open court duly sworn and sent to testify before the grand jury.

In the matter of the report of the grand jury.

This day appeared at the bar of this court, the grand jury heretofore impaneled and sworn in and for the body of the county aforesaid, viz: Harrison A. Andrews, David L. Hilty, Lewis Runkle, Michael Bolwiler, Lycurgus Thurston, B. A. Foster, Henry Smith, George W. Franks, David Downing, F. M. Case, Frank Behm, Simeon Karn, Jacob Radabaugh, Oscar Sampson, Philip B. Kelly, and presented to the court through their foreman, Harrison A. Andrews, the following report, towit:

'And also their certain other bill of indictment against Jacob Gassman for "suffering games for gain to be played in his house" indorsed "A true bill," Harrison A. Andrews, foreman of the grand jury.'"

"WEDNESDAY, *February 4th*, 1891,
Ninth Day of January Term, A. D. 1891.

THE STATE OF OHIO
vs.
JACOB GASSMAN, Defendant.

Indictment for Keeping and Exhibiting for Gain a Faro Bank.

Now comes the prosecuting attorney on behalf of the State of Ohio, and the defendant being brought into court, was arraigned
115 upon said indictment and for plea, thereto, saith he is guilty; thereupon after hearing the testimony adduced and being fully advised in the premises, it is ordered and adjudged by the court that this cause be continued for sentence."

"THE STATE OF OHIO
vs.
JACOB GASSMAN, Defendant.

Indictment for Suffering Games for Gain to Be Played in His House.

Now comes the prosecuting attorney on behalf of the State of Ohio and the defendant being brought into court, was arraigned upon said indictment and for plea thereto, saith he is guilty; thereupon after hearing the testimony adduced and being fully advised in the premises, it is ordered and adjudged by the court, that the said Jacob Gassman pay a fine of one hundred dollars ($100) and the costs of this prosecution for which execution is awarded."

Counsel on behalf of defendant, William Marvin, moved the court to strike from the record the entries above read on pages 116, 117 and 138 of the Journal 23. (Objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon counsel on behalf of plaintiff offered in evidence the Weekly Morning Republican of date February 12, 1891, being a newspaper of general circulation over the county, for the pur-
116 pose of showing that in this issue was the publication of these indictments, as tending to prove the defendant Marvin had notice of what was going on.

Counsel on behalf of defendant Marvin admitted that the paper of February 12th would show the publication of such an article, but objected to its introduction on the ground it is incompetent. (Objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon said article contained in the Weekly Morning Republican of February 12th was read in evidence and marked Exhibit 28, a copy of which is in the words and figures following, towit:

"Gamblers fined.

Judge Johnson assesses heavy penalties upon five men found guilty of conducting gambling rooms."

Thereupon JACOB GASSMAN was introduced as a witness on behalf of plaintiff, who, being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Gassman, you reside in Findlay?
A. Yes, sir.
Q. How long have you lived in Findlay?
A. About since 1852.
Q. What is your business?
A. I am in the saloon business at present.
117 Q. How long have you been in the saloon business?
A. Probably twenty years.
Q. How long were you and James Clifford—you know him?
A. Yes, sir.
Q. How long were you in this Marvin building in business?
A. About seven years, somewheres along there, I guess.
Q. Will you tell this court about when you went into that building and into this business?
A. The latter part of the eighties, I don't know exactly.
Q. About 1888 or 1889?
A. Somewheres along there, yes, sir.
Q. In 1888 or 1889 you went in together there and continued business in this building, then up to about what time from 1888 or 1889 to what time?
A. Well, the building was remodeled, we were out of the building for a while, I don't know exactly how long, we opened up again, I think in 1890.

Q. Then how long did you continue there in business?
A. Until 1895.
Q. Now, Mr. Gassman, will you tell this court as to whether you occupied, your firm, the lower floor, and also the upper floor?
A. Part of the upper floor.
Q. Which part of the upper floor did you occupy?
A. Well, I think it was four rooms at the rear end of the building.
Q. What, if any, stairway was there at the rear end of the building to go up to these rooms?
118 A. There was a stairway from the inside at the rear end, also from the outside at the rear end.
Q. Was the outside stairway you refer to up from the alley?
A. Yes, sir.
Q. And the inside stairway started from the back end of your lower floor room?
A. Yes, sir.
Q. Let me ask you if these rooms that you kept at the back end on the second floor were accessible from either stairway, the alley stairway from the outside or the inside stairway?
A. They were.
Q. Let me ask you if there is a front stairway, a wide stairway from the front goes up?
A. Yes, sir, the hallway goes through clear through.
Q. The hallway went clear back to the landing of the back stairs?
A. Yes, sir.
Q. About how wide is that hallway?
A. Well, it is wider in front than it is in the rear. Probably eight feet in front or more, five or six in the rear.
Q. Now, let me ask you, Mr. Gassman, if there is any obstruction from one end of that hallway to the other, to prevent one from seeing back?
A. No, sir.
Q. Let me ask you what these rooms on the second floor of the back end were used for by you and Mr. Clifford during the whole of the time you occupied them?

(Objected to by counsel on behalf of defendant Marvin on the ground that the defendant has already admitted those rooms were used for gambling purposes.)

Q. During the time you and Mr. Clifford were there, let
119 me ask you what those upstairs rooms were used for?
A. Part of the time they were used for gambling.
Q. From 1890 on they were used for gambling purposes, were they?
A. Part of the time, not all of the time, I guess.
Q. Do you know where Mr. Marvin lived during all of the time you occupied this building?

A. I think he lived in No. Findlay some place in the opera house.
Q. He had built a large opera house over in No. Findlay?
A. Yes, sir.
Q. Do you know about when he built that?
A. No, I don't know the date.
Q. That was how far from this building you was in?
A. About five or six blocks, I should judge.
Q. Five or six blocks away?
A. I should judge so, I don't know.
Q. Can you tell this court where Mr. Marvin had his office during that time?
A. He had an office in a block upstairs.
Q. In your block, in the block you occupied?
A. In his own, yes, sir.
Q. Where you had your rooms?
A. Yes, sir.
Q. How far was his office from these gambling rooms you had upstairs?
A. Well, it was quite a ways up above, as I think his office was the next floor.
Q. And he would have to pass through this hallway in order to reach his office?
A. Not clear through it, he could reach it from the front.
Q. Was his office directly over your rooms?
120 A. I think not, he was in the front part of the building, if I recollect.
Q. You think he was in the front part of the building?
A. I think so.
Q. Directly over your rooms?
A. I think not.
Q. Now, Mr. Gassman, do you recollect that in 1891 you and Mr. Clifford were indicted for keeping a faro and gambling place, do you recollect that fact?
A. I recollect the fact, yes.
Q. Now, tell the court will you, whether at the time you were indicted and you entered a plea of guilty yourself, there, did you?
A. Yes, sir.
Q. And whether the gambling that was spoken of in that indictment was done in these same rooms?
A. Yes, sir.
Q. Kept there in the Marvin block, do you know what the indictment of Mr. Clifford was for, whether for the same transaction?
A. I don't know.
Q. But Mr. Clifford was with you at that time in these same rooms?
A. Yes, sir.
Q. Now, Mr. Gassman, let me ask you if you recollect in 1891 that Mrs. Gage Carlin sued you two people, you and your partner?
A. I recollect of being sued by Mrs. Gage Carlin.
Q. And for a gambling debt?

A. Yes, sir.

Q. When?

A. From 1887 to 1889, somewheres along there, I don't know exactly.

Q. Now tell the court whether that suit was for money—that suit was brought against you in this period, was during the
121 time you and Clifford were in the Marvin rooms you speak of together?

A. It was.

Q. And tell the court whether during all that time you knew where Mr. Marvin was living?

A. I suppose he was living at the same place, I don't know.

Q. And whether he had his office in the same building as you related?

A. I think he did.

Q. And now let me ask you if you recollect of being sued by Mrs. Martha Myers in October, 1893? You and Mr. Clifford?

A. I think we were some time.

Q. And Mr. Marvin was sued with you?

A. Yes.

Q. Tell the court whether at that time, if you recollect that you were occupying these same rooms of Mr. Marvin you speak of?

A. We were.

Q. And whether this suit was for losses claimed to have occurred in these rooms?

A. It was.

Q. Now. Mr. Gassman, during all of the time that you occupied these rooms, let me ask you if you recollect how much rent Mr. Marvin received for these rooms from you?

(Objected to by counsel on behalf of defendant, Marvin.)

(Counsel on behalf of plaintiff stated that he desired to show that there was nearly double rent collected for these rooms, and right in 1893, more than they were worth for any legitimate purpose; objection overruled; to which ruling of the court, defendant then and there excepted.)

122 Q. That is about 29 ft. wide, is it, across there?

A. Somewheres there.

Q. It is the Bloomingdale store now is it, and rooms above?

A. Yes, sir.

Q. Mr. Gassman, what did you pay to Mr. Marvin during that period you speak of for these rooms?

A. Something over $100.00 per month.

Q. Wasn't it $1,800.00 a year?

A. No, I don't think we paid him that much.

Q. Didn't your lease provide for that?

A. I think it did, but we only paid $110.00.

Q. Do you recollect at the last trial you testified you paid $1,800.00 per year?

A. That was the contract.

Q. How does it happen you didn't pay the contract price?

A. We objected to paying that much and Mr. Marvin finally agreed to receive $110.00; I think that is it.

(By Mr. PHELPS:)

Q. Your place was the entire first floor and rooms above?

A. Yes, sir.

Q. You say you made a contract at $1,800.00?

A. I think we had a contract at $1,800.00, then paid $110.00, that is my recollection.

Q. Now, how was that additional made up, Mr. Gassman?

A. Why, it wasn't made up that I know of, it was not made up. Not that I know of.

Q. Were those back stairs there, Mr. Gassman, when you moved there?

A. Yes, sir.

Q. They were there before that?

A. They were there after the building was remodeled.

123 Q. They were there when you stated up in 1889?

A. Yes, sir.

Q. During the time you had your cessation in business, the building was repaired, and these back stairways were there when you went back?

A. Yes, sir.

Q. Had they been there before?

A. Why, I don't — they *there were* in 1887.

Q. On the inside?

A. Not on the inside, no, sir.

Q. Let me ask if there was constructed, from the saloon proper up to the rooms, a dumb waiter?

A. There was at one time, yes.

Q. That was after this remodelling by Mr. Marvin?

A. Yes, sir.

Q. After Mr. Marvin had remodelled?

A. Yes, sir.

Q. Let me ask if right opposite the gambling rooms, there was provided a water closet?

A. Yes, sir.

Q. Let me ask you if that was there before Mr. Marvin remodelled the building?

A. It was not.

Q. But when you went in again after the remodelling you found these things all ready?

A. Yes, sir.

Q. Now, after the repair of the building in 1890 let me ask if you did not pay your $1,800 a year?

A. No, sir.

Q. Now, the $100 was for the down stairs room, was it not?

A. It was for the whole thing, the way I understand it. That is my understanding of it.

Q. Now, you took care of the down stairs and Mr. Clifford
124 had charge of the gambling rooms, did he not?

A. Yes, sir.

Q. So you wouldn't know exactly what additional arrangement was up there, would you, or did you know?

A. If there was any, I think I would know it.

Q. Now, Mr. Gassman, let me ask you if, during this period and in 1892, 1893, and 1894, you folks had employed up in the upstairs room there to do the dealing a man by the name of Knisel and another by the name of Gambe?

A. Yes, sir.

Q. Experienced gamblers?

A. I suppose they were.

Q. Do you know whether Mr. Marvin was acquainted with those men?

A. I do not.

Q. And for how many years did you keep these men employed there, these experienced people?

A. Oh, I can't tell that, maybe a year or two.

Q. Their business was to deal bank, was it?

A. I think so.

Cross-examination.

By Mr. PHELPS:

Q. Mr. Gassman, what was the rental value of that property at the time that you occupied these rooms?

A. What we paid?

Q. No, what was the fair rental for purposes besides draw poker and faro; what would it be worth for a clothing store?

A. I couldn't tell you; maybe $100 a month, maybe more, I don't know.

125 Q. Do you know the fact Bloomingdale is paying $140 a month for the same space?

A. I don't know.

Q. You don't say to the court you were paying any more than the fair rental value of the property, do you?

A. No, I do not.

Q. Now, William Marvin, you have known him a long time, haven't you?

A. Yes, sir.

Q. He is a pretty good citizen, isn't he?

(Objected to by counsel on behalf of plaintiff.)

Q. He is not an expert gambler?

A. I never seen him gambling.

Q. Did you ever see him about the gambling rooms there, that were conducted by you and Mr. Clifford?

A. Never did.

Q. Did you know of his being there?

A. I did not.

Q. Did you ever have any business relation with him, or any conversation with him that would indicate that he had any knowledge of the kind of business that was going on there?

A. Not that I recollect of; I don't think I did.

Q. Now, do you know Frank Trout?

A. Yes, sir.

Q. Is he that good sized fellow with the big diamond in his shirt?

A. Yes, sir.

Q. Is that the same Frank Trout spoken of in the record here?

A. I think that is the one, yes, sir.

Q. I want to ask you if, at any time, whether Trout was
126 frequenting these rooms, he said anything about wanting to keep out of sight of Marvin, not let Marvin know he was there? What did he say to you about that?

A. I think he came in once or twice and said he would like to have me show him up the back way, he didn't want Uncle Billy to see him.

Q. Did he give you any reason why he didn't want Uncle Billy to know about it?

A. He didn't say anything about that.

Q. Uncle Billy was over in the opera house on the other side of the river in 1891, 1892 and 1893, wasn't he?

A. I don't know the dates, I know he was building about that time.

Q. He superintended that business and was his own architect?

A. I don't know, I suppose so.

Q. And was there all the time? Now, state what the fact is about Mr. Marvin being on your premises, did you ever see him there?

A. Not very often, not in the saloon.

Q. Now, it is said William had an office in the building; were you ever in his office?

A. Not that I recollect of.

Q. And did you ever see him in his office?

A. I don't know as I did.

Q. Did you ever try to get into his office yourself?

A. No, sir. Not that I recollect of.

Q. Now, what do you know about the manner in which his business was done there during that time; that is, his rents, his
127 collection of rents, do you know who done that?

A. Generally came into the saloon for the rents; I think Edson done that.

Q. His nephew?

A. Yes, sir.

Q. Now, here is another thing, Mr. Gassman, state to the court

whether or not these rooms were public gambling rooms in that sense, now, were they open and free to the public so anybody could go in or out as they pleased?

A. Well, they didn't walk in or out, anybody couldn't; anybody that wanted to gamble could, I guess.

Q. That is, if they had the password?

A. Yes.

Q. Now, these rooms were not accessible from the hall, were they, the public hallway?

A. No, it was locked.

Q. They were kept locked?

A. Yes, sir.

Q. If anybody wanted to go through there they must be admitted by some one that had a key?

A. Yes, sir, or have a key themselves.

Q. Do you know anything about the fact whether Mr. Trout had provided himself with a key by which he could get through there?

A. I couldn't tell anything about that.

Q. Was it a fact those that desired to frequent these rooms are provided with keys?

A. I think they were.

Q. What was the common ordinary mode of access to these rooms?

A. Well, some of them went in from the hallway, some went in through the saloon.

Q. Do you remember about Uncle Billy's being in California in 1890 and 1891?

A. I recollect of him being in California, but I don't remember the dates.

128 Re-direct examination.

By Mr. Poe:

Q. Mr. Gassman, you say Mr. Trout said he didn't want Uncle Billy to see him going up the stairs?

A. Yes, sir.

Q. Up to your sleeping rooms?

A. Up to the gambling rooms, I suppose.

Q. What difference would it make to see him on the stairway unless Marvin knew about the gambling rooms?

A. I don't know.

Q. You wouldn't know what he was meaning by that?

A. No, sir.

Q. You say that Mr. Marvin owned the opera house block after he built it?

A. Yes.

Q. Do you know of his owning a building down close to the bridge there where Rox Aultman and Cramer kept?

A. I think he owned a building down there, yes, sir.

Q. During this same time?
A. Yes, I think he did.
Q. Down near the bridge?
A. Yes.
Q. Do you remember of Orlando Fox being in his building, in the Union block, in business?
A. No, I don't.
Q. Do you remember of Mr. Urban having a saloon and apartments in the opera house block?
A. No, sir, I don't know.
129 Q. Do you know whether Rox Aultman and Cramer kept a gambling place in connection with the saloon and business place near the bridge, the river bank, in Marvin's building?

(Objected to by counsel on behalf of defendant.)

Q. In another building of Marvin's during this same period?

(Objected to by counsel on behalf of defendant; objection overruled; to which ruling of the court, defendant then and there excepted.)

A. I do not.
Q. Now you speak of Edson Marvin collecting rents; you say he was a nephew or brother of Mr. Marvin?
A. He was a nephew.
Q. You say he came and collected the rents from all the tenants?
A. I don't know whether he collected from all of them or not; he collected from us most of the time.
Q. Did you notice him going through the upstairs rooms collecting rents?
A. No, I seen him up there; I don't know what he did.
Q. He would sign receipts for rents for Mr. Marvin, would he?
A. Yes, sir.
Q. Did Mr. Marvin tell you he was authorized by him to do his work there about the building, of that kind?
A. I don't recollect whether he did or not.
Q. How did it happen you paid out to Edson?
A. Well, he came in.
130 Q. Or would he bring a receipt already signed from Mr. Marvin?
A. I think that was the way of it.
Q. He would bring a receipt signed up by Mr. Marvin?
A. I think that was the way.
Q. About how often would Edson be there at your place in that way collecting up?
A. About once a month, I believe.

Re-cross-examination.

By Mr. PHELPS:

Q. Did you ever see Edson in these gambling rooms?
A. No, sir.
Q. By the upper rooms you don't mean where this gambling was being conducted?
A. I would see him on the stairway, going up the hall; there are a good many rooms there.

Thereupon FRANK H. TROUT was introduced as a witness on behalf of plaintiff who, being first duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. What is your business?
A. I am in the furniture business.
Q. You have your furniture store north of the bridge?
A. Yes, sir.
Q. How long have you been in the furniture business over there?
A. 15 years.
131 Q. Tell the court whether at one time you had your furniture store in Mr. Marvin's Opera House block?
A. Yes, sir.
Q. About when was that, tell the court?
A. April, 1892, until February, 1895.
Q. Now, I want to ask you where Mr. Marvin lived from, say, 1887 to 1895?
A. He lived in what is known as 300 North Main now, where the opera house block stands.
Q. You know where this Clifford and Gassman place is that we are speaking about in this law suit?
A. Yes, sir.
Q. How far was Mr. Marvin's residence from that place?
A. Less than half a mile.
Q. I want to ask you if about January, 1893, you had a talk with Mr. Marvin?
A. Yes, sir.
Q. I wish you would tell the court what the talk was?
A. Well, he had made arrangements with my wife to see us in the evening and he came and said that he understood that I had been gambling and had lost $500 the night before.
Q. And what else was said?
A. He said that I couldn't play with experts up there and professional gamblers up there.
Q. Did he name any of them? At that time?
A. Not at that time, no, sir.

Q. Did he at any time, name those professionals?

A. He did when I first moved in the room.

Q. Who did he name?

132 A. Well, I think he named Mr. Clifford and a man by the name of Wilson and Mr. Gassman.

Q. What, if anything, did he say about Knisel or Gambee?

A. I don't think Mr. Knisel was there at that time.

Q. Now, Mr. Trout, I will ask you if about April, 1893, you had a talk with him?

A. Yes, sir.

Q. And what was that talk about; tell the court what that talk was?

A. Why, the talk was about renting his rooms across the street for a furniture store.

Q. The Clifford & Gassman place?

A. Yes, sir.

Q. How did that happen?

A. I had been in his room in the opera house block just a year, and I think on the 20th of April, this talk took place, about the last of April or 1st of May, 1893; I wanted to see him about renting the room for a furniture store. I told him I would like to have the down stairs where Clifford and Gassman had their saloon and billiard parlor for a furniture store and the upstairs where the gambling rooms were, for the parlor furniture and carpets.

Q. You wanted to move south of the river?

A. Yes, sir.

Q. Did you tell him that?

A. Yes, sir.

Q. What did he say about renting this room for the furniture store?

A. He said I couldn't afford to pay the rent. I think I asked him how much they were paying, and he said that they paid him $1,800 a year.

Q. What else did he say?

A. I said I thought he could rent it cheaper than that to a

133 legitimate business; he said the rooms were rented for sleeping rooms and he wasn't supposed to know what was going on there.

Q. Let me ask you, Mr. Trout—you have been in these gambling rooms?

A. Yes, sir.

Q. And during the period alleged in this petition, let me ask you to state to the court, whether or not the money represented by these judgments in the two cases that were brought against Mr. Marvin, whether you lost that money in these rooms?

(Objected to by counsel on behalf of defendant, Marvin, to which ruling of the court defendant then and there excepted. Counsel on behalf of defendant, Marvin, stated that it was admitted that whatever he lost, if he lost anything, he lost there.)

Q. You say you lost this money represented in both judgments during the period represented there?
A. Yes, sir, and I lost more too.

(Objected to by defendant Marvin's counsel. Answered while objecting.)

Q. State whether you lost it at Clifford and Gassman's?
A. Yes, sir.

(Counsel on behalf of defendant, Marvin, objected to the above answer and moved the court to strike out so much of the answer as relates to the fact and the extent of the loss, on the ground it is not alleged in the petition and not an issue of fact in the case. Which motion the court overruled, to which ruling of the court defendant then and there excepted.)

134 Q. Do I understand you, Mr. Trout, as to whether the moneys were lost at gaming in this building, were represented by these judgments?
A. Yes, sir.
Q. And within the period alleged in these petitions respectively?
A. Yes, sir.
Q. And at Clifford and Gassman's?
A. Yes, sir.
Q. Now, Mr. Trout, do you recollect the equipment of these rooms, do you recollect about the stairway, that goes up to it?
A. Yes, sir.
Q. How many were there?
A. There were three.
Q. Where were they located?
A. One was located in the front part of the building, the hall run along through the building; there was one from the back there on the alley, and there was one from the inside, from the billiard parlor to the rooms.
Q. Do you know whether there was what is called "dumb waiters" furnished to these rooms, from below?
A. I think there was, yes sir.
Q. And a water closet in connection with these rooms?
A. Yes, sir.
Q. And do you know whether these attachments were provided there during the time Mr. Marvin put the repairs on the building?
A. I can't answer that.
Q. Now, I want to ask you, Mr. Trout, if along about the fore part of April, 1894, you gave a check for a gambling debt to Mr. Clifford or Clifford & Gassman there for $245, for a gambling debt up there?
A. Yes, sir.
Q. That you lost in gambling there?
A. Yes, sir.

135 Q. That is no part of the amount that went into the judgment?

A. No, sir.

Q. Can you tell us any conversation you had with Mr. Marvin with reference to that check of $245, about the 10th of April, 1894, do you recollect that to be about the day?

A. Yes, sir; the 10th of April, I gave a check for $245, for more than I had money to pay for and the next morning, the payment was stopped on the check.

Q. How was the payment stopped, if you know?

A. I 'phoned to Mr. Hull, cashier of the Farmers' national bank, and stopped the payment.

Q. How did it happen you stopped it?

(Objected to by counsel on behalf of defendant, court ruled that it shall be answered if it is preliminary.)

Q. How did you happen to telephone there?

A. Well, my wife said that if I didn't stop it, she would, so I thought rather than bring her into the case, I would stop the payment.

Q. She learned the check was given by you?

A. Yes, sir.

Q. Now, Mr. Trout, how soon after the night you gave the check, if you can tell, was it you had the talk with Mr. Marvin about this check?

A. I think it was on the 11th perhaps in the afternoon.

(Court ruled that the above answer as to what the wife said to him as to stopping the payment of the check may be stricken from the record.)

(Counsel on behalf of defendant Marvin stated that this
136 transaction and the occurrence transpired after the period they are inquiring about. Plaintiff's counsel stated it was the same period precisely.)

Q. Mr. Trout, you say that Mr. Marvin came to speak to you about this check you had stopped in the morning?

A. No.

Q. Or in the afternoon?

A. Yes, sir.

Q. That same afternoon?

A. Yes, sir.

Q. Where did he come to see you?

A. Came to my store.

Q. That is Mr. William Marvin, this defendant?

A. Yes, sir.

Q. What did he say?

A. Said he learned I had stopped a gambling check of $245; I hadn't ought to have done it; I ought to have told Jim, and he would have held it until I could have taken care of it.

Q. Who was he speaking of when he said Jim?
A. James Clifford.
Q. What further did he say about it?
A. He said it would hurt my credit.
Q. What did you say to him?
A. My credit was too good there; I wanted to hurt my credit.
Q. Now, Mr. Trout, let me ask you if, after he had the talk with you in April, on April 10th or 11th, 1894, about this check, if you know whether that gambling house continued right along?
A. Yes, sir.
Q. And whether you were up until June 20th?
A. I was there until along about the first of June.
Q. Until the 1st of June?
A. Yes, sir.
137 Q. Tell the court whether the gambling rooms continued then as they had been before?
A. Yes, sir.

Cross-examination.

By Mr. PHELPS:

Q. How is business, Mr. Trout?
A. Good.

Thereupon BELLE B. TROUT was called as a witness on her own behalf, and being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. You are the wife of Frank H. Trout?
A. Yes, sir.
Q. For how many years have you been married?
A. Fifteen.
Q. Your husband was in the furniture business all that time?
A. Yes, sir.
Q. Where did you live during that time?
A. The first six years and a half we lived at No. 316 North Main.
Q. How far from Wm. Marvin's residence?
A. Just 50 feet lot between us.
Q. He lived, then, in the opera house block?
A. Well, the opera house wasn't built, then.
Q. After that, you lived where?
A. No. 128 Center St.
Q. How far is that from the opera house where Wm. Marvin lives?
138 A. Not quite 400 feet from Main street, and he lived on the corner of Center, head of Center St. on Main.

Q. So you have lived near neighbors to him all this time?

A. Yes, sir.

Q. How far is it from where Mr. Marvin lived to the Clifford and Gassman rooms, over where Bloomingdale is now, if you know?

A. Oh, I suppose about five or six blocks.

Q. Across the river?

A. Yes, sir.

Q. I want to ask you, Mrs. Trout, if you had any talk with Mr. Marvin in Jan. 1893?

A. Mr. Marvin had the talk with me.

Q. Tell the court about that, in Jan., 1893?

A. He came to me in the afternoon and asked me if I knew that Frank had lost $500 the night before, gambling. I told him I did not and he said he wanted to have a talk with us after supper, and that George, that was his nephew, was working for us, he would go out when he came in, and he wanted to talk with us together.

Q. He would have George go out?

A. Yes, sir.

Q. Now, then, did you meet him that evening for a talk?

A. He met us in the store.

Q. In your store?

A. Yes, sir.

Q. Your store was then in the opera house block?

A. Yes, sir.

Q. Tell the court about it?

A. Well, he talked with Mr. Trout, he told me——

Q. In your hearing?

A. Yes, sir. He told him he heard he had lost $500 the
139 night before gambling, and that he couldn't afford to secure him any more, if that was the way he was going to do, and that he didn't need to think that he could beat professionals up there, for he couldn't.

Q. Now, was there anything more said that you recollect, at that time?

A. Not at that time.

Q. Now let me ask you whether, in April, 1893, at the time when you went to the store for your husband for dinner, you had any further talk with him, and where you met him, if you did?

A. I met him in front of the store and he walked up to our home at 316 North Main.

Q. Walked with you?

A. Yes, sir, and he said, "Did you know Frank was gambling again?"

Q. Was that in April, 1893?

A. I can't tell if it was April, it was either March or April. I said, "If he is, I can tell you where he is doing it." He said, "No," he said, "Where?" I said, "In Clifford & Gassman's room, and in Bill Marvin's building."

Q. That is the way people spoke of him?

A. Yes, sir. He said "No, I think not, they tell me they are not gambling there." I said, "I don't think anything about it, I know it."

Q. What did he do about being emphatic?

A. He stamped his cane on the walk.

Q. Now, Mrs. Trout, let me ask you, you heard us talk about a check?

A. Yes, sir.

Q. Let me ask you if, about the 10th or 11th of April, 1894, you had any talk with Mr. Marvin, or heard anything about his
140 gambling check?

A. He had a talk with me.

Q. Where was it?

A. He came to me, I was in front of his store.

Q. Over north?

A. Yes, sir. He wanted to know if I knew Frank had stopped a gambling check of $245; I told him I did and I had helped to stop it.

Q. What was the fact about that?

A. Well, he had given a check for $245 more money than he had in the bank, checked it all out and that much more.

Q. What did he say to you?

A. I asked him if Clifford told him, and he said, "Clifford didn't tell me." I said, "The bank didn't tell you?" he said, "No, the bank didn't tell me."

Q. You say that was the same afternoon that the check was stopped in the morning?

A. I know it was right the next day after the check had been stopped in the morning.

Q. Now, did you have personal knowledge of your husband going up there to these places at any time, that is, whether you saw him go up there?

A. I saw him go up the back stairway.

Q. He didn't know you were looking, did he?

A. He did not.

Q. Now, let me ask you, Mrs. Trout, if you had any talk with Mr. Marvin, the defendant, after you commenced to look after this matter yourself, in looking after a legal remedy about it?

A. I had met Mr. Clifford at your office, and had a talk
141 with him, I had gone to your office, and sent for him, rather, and the next afternoon, I couldn't say whether it was the same day or the next day——

Q. That was after this period?

A. Yes, sir. Mr. Marvin came to me and remonstrated, told me it would hurt Mr. Trout's credit, and there would be other suits brought, and he would have rather deed me a farm than have me sue Clifford & Gassman.

Q. Tell the court whether, from what he said to you, whether he learned from Mr. Clifford you were looking into this matter?

A. I supposed Mr. Clifford told him.

Q. What did he say about it?

A. I don't know that he said anything about it.

Q. Tell the court whether you had talked with any of the parties about it except Mr. Clifford?

A. No, sir.

(Counsel on behalf of defendant Marvin objected to the above answer and moved the court to strike the same from the record, for the reason that it was after they had brought suit.)

(Plaintiff's counsel stated that had not started the action yet.)

(Court ruled that if this is connected with anything that shows his knowledge, it is admissible, if it is not connected, it has no weight, and is irrelevant.)

(Counsel on behalf of defendant objected to the testimony of the witness in regard to conversations with Marvin, since action
142 was commenced, objection sustained, to which ruling of the court plaintiff then and there excepted.)

Q. You were the plaintiff in all these cases in which these judgments were recovered?

A. Yes, sir.

Q. The same Belle B. Trout to whom these judgments were rendered?

A. Yes.

Cross-examination.

By Mr. PHEIPS:

Q. How long have you known Wm. Marvin?

A. I have known of him all my life.

Q. He has been on terms of friendship with you and with your husband for a great many years?

A. I had never been very friendly with Mr. Marvin up to the time I was married and moved over on the north side.

Q. Now, Mr. Marvin, for a good many years, was a financial backer of your husband, furnished him money, loaned him his credit?

A. Loaned him credit, I believe, to the amount of $3,000.

Q. To assist him in his business over there in the furniture business?

A. Yes, sir.

Q. He was often in your store?

A. Yes, sir.

Q. Came to you and your husband in a spirit of friendliness and cautioned you about Frank's habits?

A. It was not in a spirit of friendliness.

Q. He donethat?

A. Yes, sir.

Q. And he wanted to have a talk with you and him together?

A. Yes, sir.

143 Q. Came there and told you he learned Frank had been gambling and lost a large amount of money?
A. Yes, sir.
Q. And told him he couldn't do that, he couldn't afford to do that, he couldn't gamble with those professionals?
A. Yes, sir.
Q. And Frank had his store in Mr. Marvin's rooms for a long time?
A. Yes, sir.

Thereupon A. E. HARDESHELL was introduced as a witness on behalf of plaintiff, who being duly sworn testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Hardeshell, where do you live?
A. I live in Findlay.
Q. What is your business?
A. The coal business, dealing in hard coal this winter.
Q. Where do you live with reference to Mr. Marvin's residence, the distance of it?
A. I don't know exactly where Mr. Marvin lives.
Q. Right behind Pullin's drug store on Center street?
A. A block and a half from that.
Q. How long have you lived in Findlay?
A. About thirty years.
Q. Were you at one time traveling on the road for a while?
A. Yes, sir.
Q. For a company?
A. Yes, sir.
Q. When was that about?
144 A. Well, I traveled for a Findlay company, a dry goods company, between 1893 and 1896.
Q. You would be at home in Findlay nights?
A. Yes.
Q. You have been acquainted with Mr. Marvin how long?
A. Well, I have known Mr. Marvin to know who he was probably ever since I have been here, never was much acquainted with him.
Q. That is for a great many years?
A. Yes, sir.
Q. Did you know the place kept by Clifford and Gassman across from the court house here?
A. Well, I have been up there a few times.
Q. You know the place?
A. Yes, sir.
Q. Let me ask you during the years from 1890 to 1895 if you

could tell the court, or do you know Mr. Marvin lived there all the time during that time?

A. Yes, sir.

Q. Could you tell the court what the reputation of that building was, that place; can you tell the court what was the general reputation of that Clifford and Gassman place in the community here in Findlay and hereabouts?

(Objected to by counsel on behalf of defendant Marvin, objection overruled, to which ruling of the court defendant then and there excepted.)

Q. Tell the court?

A. I understood now, it was a place——

Q. Now what you understood; what was the reputation among the people?

A. You mean whether they were gambling there or not?

145 Q. Yes, sir.

A. I understood it as such, that it was a gambling place.

Q. I understo-d it as such, that it was a gambling place.

Q. I ask you what the reputation was in the vicinity, as to what kind of a place they were keeping?

A. That is about what I have answered.

Q. And what do you say was the reputation there?

A. As a gambling place.

Q. Now, Mr. Hardeshell, let me ask you if you can tell what the reputation was out of the community, as traveling man, if you learned?

(Objected to by counsel on behalf of defendant Marvin, objection sustained, to which ruling of the court plaintiff then and there excepted.)

Q. I want to ask you, Mr. Hardeshell, if at any time when you went to these gambling rooms yourself, you saw Mr. Marvin about and if so, how much?

A. When I went by myself, do I understand?

Q. Yes, sir?

A. I never went there by myself.

Q. I mean when you went there yourself?

A. I met him in the hall several times.

Q. Met him in that same hall there?

A. Yes, sir.

Q. Tell the court whether when you went into these rooms, he could see you from where he was, whether there was any obstruction between you?

A. I don't know of any obstruction; I never noticed any.

(Objected to by counsel on behalf of defendant, answered while objecting.)

146 Q. How far from the entrance to the gambling rooms was it you met him in the hall there?

A. I don't know.

Q. About how often did you meet him in that way, when you went up into these rooms?

A. I have never went into the rooms very often.

Q. About how often did you meet him the times you did go up?

A. I can't say that.

Cross-examination.

By Mr. PHELPS:

Q. Would you say you have met him at all?

A. Yes.

Q. When?

A. During the time I went up.

Q. How can you happen to remember having seen Mr. Marvin up there in the hall when you were going up there five or six or seven years ago; was it an uncommon thing to meet anybody in that public hall-way; it was a wide hall-way that extended through the building?

A. Yes, sir.

Q. And there were offices on both sides of the hall?

A. Yes, sir.

Q. Now how do you happen after the lapse of five or six or seven years, how does it happen that you remember of meeting Mr. Marvin in the hall when you were going up to play poker?

A. I didn't play poker.

Q. What did you do?

A. I went up with a friend of mine to look on.

Q. Did you play?

A. No, sir.

147 Q. Now, did you ever hear anybody say anything about this being a gambling place except people that went there and gambled; did you ever hear anybody else say anything about it?

A. Well, I don't know as I have.

Q. Now, what do you mean by this having the reputation of being a gambling place?

A. I don't know how I knew it; I knew it probably the same shape you knew it.

Q. You knew it was a gambling place because you had been there?

A. Yes, sir.

Q. And you remember of having talked with other people that frequented it for the same purpose?

A. Yes, sir.

Q. So whether anybody that didn't frequent it did have knowledge or know about it, you don't know; you never talked with anybody else about it?

A. Well, I have talked with other people about it.
Q. Since this law-suit was commenced?
A. No.
Q. Who did you ever talk with about this being a gambling place except people who gambled there?
A. That same question talked over, I have heard it talked over in the hotel offices over the country when I was out on the road.
Q. With men that had been there gambling?
A. Traveling men.
Q. Men that are in the habit of gambling?
A. I don't know.

(Counsel on behalf of defendant Marvin moved the court to withdraw and strike from the record the testimony of this witness,
148 Hardeshell, for the reason it is not competent. Decision reserved by court.)

Re-direct examination.

By Mr. POE:

Q. Let me ask you when you were up there at that place, about how many people would be in there?
A. Oh, I wouldn't be able to say, different numbers, sometimes there would be more than other times.
Q. About how many at any time?
A. Well, I never made any count of them; half a dozen or a dozen or such a matter.
Q. Now, did you see Frank Trout up there playing sometimes?
A. Yes, sir.
Q. Do you know that he lost money there?
A. No, I don't.
Q. Didn't you know of him borrowing money up there when he run out himself or anything like that?

(Objected to by counsel on behalf of defendant; objection sustained; to which ruling of the court plaintiff then and there excepted.)

Thereupon ROBERT S. HIBBETT was introduced as a witness on behalf of plaintiff, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Hibbett, you live close to the city here?
A. I live in the city. 119 West street.
149 Q. You have lived in this vicinity or this city how long?
A. All my life, 40 years.
Q. Have you held official positions in the city?

A. I have, yes, sir.
Q. Tell the court what?
A. Well, I was deputy sheriff in this court, I was city marshal, and I was on the police force five or six years.
Q. That covered about what period of time, Mr. Hibbett?
A. About 1889 to 1896, I think.
Q. Now you moved around among the people here in Findlay a good deal, did you not?
A. Yes, sir, I was out on the street a good bit.
Q. Did you know this Clifford and Gassman place during that period?
A. Yes, sir.
Q. Did you have the means of knowing what its reputation was?
A. Yes, sir, I did.
Q. Tell the court what the reputation of that place was during that period?
A. Well, it was a saloon and gambling house.
Q. That was the reputation you mean in this vicinity?
A. Yes, sir.

Cross-examination.

By Mr. PHELPS:

Q. You was the head of the police department here, was you?
A. From 1892 to 1894, yes, sir.
Q. And this was a gambling house was it?
A. Yes, sir.
Q. You would go in there, you say?
150 A. Never, no, sir, during these two years I didn't go up; I had previous to that.
Q. You thought a chief of police hadn't ought to go in there?
A. I didn't suppose they made a business of it.
Q. You hadn't any duty there?
A. There was never any affidavit filed.
Q. You were the chief of police and responsible for the morals of the city?
A. Yes, sir, they never had done so before that.
Q. You followed the precedent of your predecessors?
A. Yes, sir.

Re-direct examination

By Mr. POE:

Q. You say you were there before?
A. Yes, sir.
Q. When?
A. I came to the door when I was working under Mr. Totten as the police docket will show here in the police court.

Q. How did it happen you went there at that time, as policeman or sheriff?

(Objected to by counsel on behalf of defendant.)

A. I was deputy sheriff at that time.
Q. And whether you had orders from anywhere to go there?

(Objected to by counsel on behalf of defendant. Court stated that the witness had better tell the purpose of his visit.)

Q. What business, or what was the purpose of your visit?
151 A. We had a warrant for a gambling house, to make a raid on the gambling house.
Q. Let me ask if you can recollect of the indictment against Clifford and Gassman?
A. That was after that; this raid was before that; this raid was when I was on the police force after spending two years on the police force, I was deputy sheriff from 1892. I went there when I was deputy sheriff, under Judge Johnson's instructions.
Q. Judge Johnson of the common pleas court?
A. Yes, sir.
Q. That was about the time of this indictment?
A. Yes, sir, that was when they plead guilty on the indictment, or Mr. Gassman did, it was the next morning after he plead guilty on the indictment.
Q. That you went under orders of the court of common pleas?
A. Yes, sir.

Thereupon E. C. SHOWMAN was introduced as a witness on behalf of plaintiff, who being first duly sworn testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Showman, you live where?
A. In Van Buren.
Q. That is how far north of town?
A. Right north of town, on the east side, right in Van Buren.
Q. You live in Van Buren?
A. Yes, sir.
152 Q. How far north is Van Buren from Findlay?
A. Seven miles.
Q. Right on the street car line?
A. Yes, sir.
Q. What is your business?
A. Farmer.
Q. Are you related to Frank H. Trout?
A. Yes, sir.
Q. How?

A. His cousin.

Q. I want to ask you, Mr. Showman, if you know Mr. Marvin, the defendant?

A. I do when I see him, not personally acquainted with him.

Q. Will you tell the court whether or not in 1893 or the fore part of 1894, you knew the Clifford and Gassman place?

A. Yes, sir.

Q. Whether you were up there at any time?

A. I was.

Q. How many times were you up?

A. I was up three or four times.

Q. During that period?

A. Yes, sir.

Q. What were you going up there for during that time?

A. Playing poker and faro.

Q. Was Frank Trout up there at any time when you were?

A. I went with Frank Trout.

Q. About how many people did you find in there at a time, Mr. Showman?

A. There were about 8 or 10 or 12 or 15.

Q. Do you know whether Frank Trout lost any money there?

A. He did when I was with him, invariably.

153 Q. Were you in Findlay frequently at other times when you were not up there?

A. Oh, yes.

Q. You did your trading here largely?

A. Yes, sir.

Q. Did you have the means of knowing the reputation of this place during those years?

A. Well, they gambled, I guess, at least when I was there.

Q. What I mean is the reputation, about how it was talked about in the community here?

A. Well, Clifford & Gassman's place was always known as a saloon and gambling house as far as I know.

Q. Among the people you mean?

A. Yes, sir.

Q. And what do you then say was its reputation?

(Objected to by counsel on behalf of defendant on the ground it is leading and suggestive.)

Q. What do you say to the court as to what the reputation of this place was during these years in the community?

A. It was a saloon and gambling place.

Thereupon WILLIAM EDWARDS was introduced as a witness on behalf of plaintiff, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Edwards, where do you reside?
A. 1303 North Main street.
Q. In Findlay here?
A. Yes.
154 Q. How long have you been a resident of the city of Findlay?
A. 56 years.
Q. What is your business?
A. I ain't in any business.
Q. Formerly your business was what?
A. Formerly I was in the harness business and later years my boys and I were in the shoe business.
Q. You held the office of water works trustee?
A. Yes, sir.
Q. How far did you live from where Mr. Marvin lived, if you know.
A. Sometimes we lived close, again other times we lived further apart.
Q. Lived all the time in North Findlay, both of you?
A. Well, nc, since 1887, I have lived north of the river and I think some years before that Mr. Marvin lived north of the river, likely three-fourths of a mile north of the river. Later years Mr. Marvin moved into what is called the opera house block, then we were about 300 feet that our residences were apart.
Q. Do you know where the Clifford and Gassman place was?
A. Yes, sir, I know where the rooms were.
Q. That is where Mr. Bloomingdale's store is now?
A. Yes, sir.
Q. Did you have the means of knowing from 1890 to 1895 what the reputation of this place was in this community?
A. Well, from being around among the citizens, I was hearing the talk and hearing the remarks made about it, and that would be the only way I would have any means of knowing.
155 Q. Well, now what was that reputation?
A. It was the common reputation and talk on the street, he kept a fancy gambling house in connection with this saloon.

Cross-examination.

By Mr. PHELPS:

Q. Did you tell the court you were not doing business now at all?
A. Yes, I am in partnership with Mr. Phelps.
Q. Ain't you and I running a truck farm?
A. Yes.

(By Mr. POE:)

Q. You have to do all the work, don't you, on the farm?

Thereupon GEORGE W. ROBINSON was introduced as a witness on behalf of plaintiff, who being duly sworn testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Robinson, you live in Findlay, do you?
A. Yes, sir.
Q. You have lived here how long?
A. Off and on, I have lived here 65 years; I was born here.
Q. What has been your business, Mr. Robinson?
A. Stove and tin ware.
Q. Do you know Mr. Marvin?
A. Yes, sir.
Q. You have known him how long?
A. Since I was a boy.
156 Q. Now in the last, say from 1887 to 1895 he lived about where?
A. I can't answer that.
Q. Let me ask you if you knew where the Clifford & Gassman place was over there?
A. Yes, sir.
Q. About how far did Mr. Marvin live from you during that time?
A. I don't know where Mr. Marvin lived at that time.
Q. When he lived in the opera house block at Center street, there, that is about how far from this building?
A. Pretty near half a mile.
Q. Now, Mr. Robinson, during the years from 1885 to 1895 have you means of knowing the reputation of the Clifford and Gassman place across the street here?
A. Yes, sir.
Q. In the community?
A. Yes, sir.
Q. Tell the court what its reputation was, I mean during that period?
A. What the reputation of the building was?
Q. Yes, sir?
A. The reputation at that time was it was a gambling place, that was the reputation.

And the foregoing being all the evidence offered in chief by said plaintiff, said plaintiff rested her cause.

Counsel on behalf of defendant moved the court to withdraw and strike from the record all the evidence offered by the plaintiff relating to the reputation of this building in Findlay or elsewhere.

The court ruled that all the evidence that has been offered that goes to the reputation elsewhere, than in the vicinity right here in
157 Findlay, is ruled out and will not be considered, but that the evidence that has been offered and admitted on this point that goes to the general reputation in the immediate vicinity here, will be retained, and the motion as to that part of the evidence is overruled, and that when the decision is rendered, the court will indicate clearly in the opinion, the decision as to these questions, as to whether the evidence has been retained or not, to which ruling of the court, defendants then and there excepted.

Thereupon counsel on behalf of defendant, demurred to the evidence of the plaintiff, on the ground there is no proof, no evidence tending to prove that the husband of the plaintiff, at any time, lost or paid to any one any sum of money upon the premises of the defendants, which demurrer to the evidence the court overruled, to which ruling of the court defendants then and there excepted.

And the evidence of both sides being closed, both parties rested their cause, and the foregoing is all the evidence offered or introduced during the trial of said case.

Thereupon the court found the issues in favor of the plaintiff, and against said defendants, to which said finding of the court the defendants then and there excepted.

Whereupon, within three days, the defendant filed a motion for new trial, upon the grounds and for the reasons therein stated, and moved the court to set aside its said findings and grant a new trial herein, which said motion the court overruled and refused, to which ruling of the court defendant then and there excepted.

158 Circuit Court, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 965.

Motion for New Trial.

Now comes the said defendant, William Marvin, and moves the court to set aside and vacate the decision and judgment by it herein rendered, and to grant to this defendant a new trial of this cause, for the reasons and upon the grounds following, to-wit:

1. Because the said decision and judgment is contrary to the uncontroverted evidence in the case.

2. Because the said decision and judgment is contrary to law.

3. For error of law occurring during the trial of the cause, and at the time excepted to by this defendant, in this, among other things, to-wit; that the court erred in admitting testimony offered by plaintiff to sustain her case against the exceptions of said defendant.

4. Because the said decision and judgment is not sustained by the evidence submitted by the plaintiff in the case.

5. Because the statute under, by authority and in pursuance of which the said plaintiff brought her case is unconstitutional and in contravention of the constitution of the State of Ohio.

159 6. Because said action was at the time, and from the commencement thereof, barred by the statute of limitations.

WILLIAM MARVIN, *Defendant*,
By PHELPS & DAVID,
J. A. & E. V. BOPE, AND
ALFRED GRABER,
His Attorneys.

And thereupon the defendant causes this bill of exceptions to be filed with the clerk of the court of common pleas of Hancock county, Ohio, this — day of February, A. D., 1903; and thereupon counsel for plaintiff, in writing, indorsed their approval of the foregoing as being a correct bill of exceptions of the evidence produced at the trial; and the same being submitted to us, the undersigned judges who sat in the trial of this cause, we, upon examination of said bill of exceptions, and being duly advised in the premises, find the same to be full, true and correct, and that it contains all the evidence adduced at the trial, and we hereby allow and approve the same, and attach our signatures thereto, and at the request of the defendant it is ordered that the same be deposited with the papers in the case and made part of the record of the case, but not to be recorded on the journal or complete record of the case.

So done and ordered this March 23d, A. D., 1903.

R. M. VOORHEES,
M. H. DONAHUE,
Trial Judges.

Endorsed on cover: File No. 19,328. Ohio supreme court. Term No. 246. William Marvin, plaintiff in error, *vs.* Belle B. Trout, Filed May 7", 1904. File No. 19,328.

CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1905.

No. [redacted] 20.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED MAY 7, 1904.

(19,329.)

(19,329.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 247.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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a 8417.

THE STATE OF OHIO, }
City of Columbus. }

Supreme Court of the State of Ohio.

To the honorable the Supreme Court of the United States:

Pursuant to the command of your within writ of error, directed to us, we, under our seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the judges within named, in a certain authenticated transcript to this writ attached, send, as within we are commanded.

Seal of the Supreme Court of the State of Ohio.

In witness whereof, I, Lawson E. Emerson, clerk of the supreme court of Ohio, have set my hand and seal of said court, this 25th day of April, A. D., 1904.

LAWSON E. EMERSON,
Clerk Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b *Petition for Writ of Error from Supreme Court of the United States to the Supreme Court of Ohio.*

Supreme Court of Ohio.

WILLIAM MARVIN }
against } Case No. 8417. Petition.
BELLE B. TROUT. }

To the Honorable William T. Spear, chief justice of the supreme court of the State of Ohio:

Your petitioner William Marvin, respectfully shows:

That heretofore, to wit, on March 15th A. D. 1904 the supreme court of the State of Ohio affirmed the judgment herein of the circuit court of Hancock county, State of Ohio, which judgment of affirmance was a final order made by the highest court of the State of Ohio; and the highest court of the State of Ohio having jurisdiction of said case, and in which a decision could be had; and in which final order and judgment, and the proceedings had prior thereto in this case in said circuit court of Hancock county, State of Ohio, certain errors were committed to the prejudice of said William Marvin, all which will more in detail appear from the assignment of errors which is filed with this petition.

Said Belle B. Trout brought suit under section forty two hundred and seventy three (4273) of the Revised Statutes of Ohio, as a third person and recovered a judgment at law therein against James Clifford and Jacob Gassman, who were tenants of William Marvin, for money alleged to have been lost and betted by one Frank H. Trout and won by said James Clifford and Jacob Gassman from him.

Thereafter said Belle B. Trout brought this action as a suit in equity against said William Marvin to subject his real estate upon which said gambling is alleged to have occurred to the payment of her judgment so obtained against Clifford and Gassman upon the ground that said William Marvin as such owner of the real estate knowingly permitted said gambling to be done upon his said real estate, and it was therein claimed that such suit was authorized by section forty two hundred and seventy five (4275) of the Revised Satutes of Ohio; and thereupon said circuit court sitting as a court of equity, and in which no jury was provided or authorized by the constitution and laws of the State of Ohio, took jurisdiction of said case and tried the same as a court of equity
c and found and entered upon its journal a finding of facts to the effect that such real estate of said William Marvin was liable for the amount of said judgment so recovered by said Belle B. Trout against said James Clifford and Jacob Gassman, and for interest thereon, and for the costs of that suit, and for the costs of this suit against said William Marvin; and said circuit court rendered a judgment and decree upon their said finding of facts that said real estate of said William Marvin be sold by the sheriff of Hancock county, Ohio, to satisfy said judgment, interest and costs, and increase costs, and that he pay to said Belle B. Trout out of the proceeds of sale the sum of seventeen hundred and ninety-four dollars ($1794), besides interest and costs.

That said finding and judgment was affirmed by said supreme court of Ohio as aforesaid; and a special mandate was sent from that court to the court of common pleas of said Hancock county to carry said judgment into execution; and an order of sale is now in the hands of the sheriff of Hancock county commanding him to appraise, advertise and sell said real estate of William Marvin to satisfy said finding, judgment and decree.

Your petitioner further shows that a Federal question was made in the thirteenth paragraph of his petition in error in said supreme court of the State of Ohio, namely:

d First. Whether the said section forty two hundred and seventy three (4273) of the Revised Statutes of the State of Ohio which authorizes any person to bring suit to recover money lost at gaming is repugnant to the Constitution of the United States, or the amendments thereto.

Second. Whether said section forty two hundred and seventy five (4275) of the Revised Statutes of the State of Ohio which authorizes and fixes liability against the building owned by parties

other than the gamblers is repugnant to the Constitution of the United States, or the amendments thereto.

Third. Whether in the enforcement of said sections forty two hundred and seventy three (4273), and forty two hundred and seventy five (4275), or either of them as against said William Marvin, and the construction put upon the same by said circuit court of Hancock county, Ohio, and by the said judgment of affirmance by the supreme court of Ohio, said William Marvin has been deprived of any substantial right guaranteed to him by the Constitution of the United States, and the amendments thereto.

Fourth. Whether a judgment lien had against gamblers for a gambling debt can be asserted in a court of equity against the owner of the building in which the gambling is alleged to have been done, and to which judgment such owner is neither a party or privy, and thereby deprive him of his common law right to a jury trial upon each and all the issues joined, without violating the Constitution of the United States, or the amendments thereto.

Fifth. Whether a judgment against said William Marvin in a court of law wherein he had a right to have the judgment of the jury as to his liability under said sections of the statutes of Ohio, is necessary before the powers of a court of equity can be invoked to either create or enforce the alleged gambling debt against his said real estate.

Sixth. Whether said statutes, or the said proceedings of said courts of the State of Ohio violate in effect and results section one (1) of article fourteen of the amendments to the Constitution of the United States.

e Petitioner further shows that a Federal question was made in said case, to wit, as hereinbefore set out, and that said judgment of said supreme court of Ohio was repugnant to the Constitution of the United States, and repugnant to the amendments thereto; and that a decision of said Federal question was necessary to the judgment rendered.

Your petitioner files herewith his assignment of errors.

Wherefore your petitioner presents herewith an exemplified transcript of the record of the supreme court of Ohio in said case and prays that a writ of error to said supreme court of Ohio be allowed; that citation be granted and signed; that the bond herewith presented be approved, and that upon compliance with the terms of the statute in such cases made and provided said bond and writ of error may operate — a supersedeas, that the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment aforesaid of said supreme court of Ohio be reversed, and the said William Marvin held harmless as to his said real estate in said case.

WILLIAM MARVIN,
By GEO. F. PENDLETON,
ALFRED GRABER, AND
—— ——, *His Attorneys.*

The writ of error as prayed for in the foregoing petition is hereby allowed this 12th day of April A. D. 1904, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of $1,000.00.

Dated at Columbus, Ohio, this 12th day of April A. D. 1904.

WILLIAM T. SPEAR,
Chief Justice of the Supreme Court of Ohio.

f [Endorsed:] 8417. William Marvin against Belle B. Trout. Petition for writ of error from Supreme Court of United States. Filed Apr. 12 1904 Supreme court of Ohio. L. E. Emerson, clerk. Geo. F. Pendleton, Alfred Graber and Geo. H. Phelps att'ys for Wm. Marvin.

g *Assignment of Errors on Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Ohio.*

Supreme Court of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } Case 8417.

Now comes the said William Marvin, plaintiff in error, and for an assignment of errors herein says: That at the December term A. D. 1902, to wit, on January 26, A. D. 1903 of the circuit court of Hancock county, State of Ohio, in a certain case therein pending in which he was defendant, and said Belle B. Trout was plaintiff, a judgment decree and order upon a finding of facts made by said circuit court were entered in favor of said Belle B. Trout, and against him, the said Marvin for $1794 besides interest and costs, and an order was made directing the sheriff of Hancock county, Ohio, to sell twenty nine and a half feet off of the south side of lot numbered 86 in the city of Findlay, said county, and out of the proceeds to pay said Belle B. Trout said sum of $1,794, and interest and costs if default should be made by said William Marvin to pay said amount.

Said Belle B. Trout had before that time in an action at law by the verdict of the jury and judgment of the court of common pleas of said county recovered against James Clifford and Jacob Gassman, tenants of said Marvin occupying said real estate, for money alleged by her to have been lost by one Frank H. Trout at gaming with said James Clifford and Jacob Gassman. Her petition was based upon section 4273 of the Revised Statutes of Ohio, and a recovery was had by her to her use against them for the money lost, as she alleged, by said Frank H. Trout and won from him at gaming by said James Clifford and Jacob Gassman.

She thereupon brought this action as a suit in equity against said William Marvin to subject his said real estate upon which she alleged

said gambling was done, to the payment of her said judgment against said James Clifford and Jacob Gassman, alleging in substance that said William Marvin knowingly permitted said parties to gamble upon his said real estate, and in certain rooms in the building on the same, founding her said equitable action upon section 4275 of the Revised Statutes of Ohio; and said circuit court sitting as a court of equity, and being a court in which no jury is provided by law, took jurisdiction of said case and at the trial
h thereof made and entered upon its journal a finding of facts to the effect that said real estate, as the property of said William Marvin was liable for said judgment so had against said James Clifford and Jacob Gassman, and thereupon said circuit court entered said judgment decree and order in favor of said Belle B. Trout and against said William Marvin; all which will more fully appear by the record filed herewith.

Plaintiff in error further says that at the January term of the supreme court of the State of Ohio, to wit, on March 15th A. D. 1904, said cause was heard by said supreme court of Ohio upon the petition in error of said William Marvin, which raised for decision all the errors hereinafter set forth, and thereupon said supreme court of Ohio, which is the highest court of law and equity in said State of Ohio in which a decision of said case can be had, affirmed said finding, judgment, decree and order so made and entered in said circuit court, and remanded said case to the court of common pleas of said Hancock county for execution; all which will more fully appear by an authenticated transcript of the record in said case filed herewith.

Said William Marvin further says: That in the said proceedings, and the rendering of said judgment, decree, and order, error intervened to his prejudice, as will appear by said record; and that among errors so intervening are the following:

1. The said findings, judgment and order of said circuit court of Ohio, and said judgment of affirmance of the supreme court of Ohio, violate in their effect, and in their results, and are repugnant to section one of article fourteen of the amendments to the Constitution of the United States.

2. That said supreme court of Ohio erred in not giving to said William Marvin as full and adequate protection under the Constitution of the United States and amendments thereto as would have been secured to him if said case had been tried in the courts of the United States; he being a citizen of the United States.

3. That said sections 4273 and 4275 as the foundation of said suit and the findings, judgment and order, and said judgment of affirmance, if enforced against said William Marvin, and his said property amount to an attainder and forfeiture, even beyond his own lifetime, which is prohibited by article one section nine, and by article one section ten of the Constitution of the United States.

i 4. That the said findings, judgment, decree and order amount to a forfeiture, and confiscation of his said real estate,

and cuts off his title in fee, contrary to section three of article three of the Constitution of the United States.

5. That the said sections 4273 and 4275 of the Revised Statutes of Ohio, upon which this suit is based, as construed and enforced by said circuit and supreme court of Ohio against said William Marvin contravene the fifth, sixth, seventh, eighth, ninth and fourteenth amendments to the Constitution of the United States.

6. The said William Marvin is a citizen of the United States and as such is entitled to the equal protection of the laws, and to the possession and enjoyment of his said real estate unless taken for some tax or assessment, or other public charge, and the taking of the same for the benefit of said Belle B. Trout, who lost nothing by said alleged gaming is an unwarranted exercise of the police power of the State of Ohio, by the machinery of its said statutes, and decisions, and is a violation of the spirit of the United States Constitution and the amendments thereto.

7. The said section- forty two hundred and seventy three (4273), and forty two hundred and seventy five (4275) of the Revised Statutes of Ohio, upon which this suit is based, and without which it could not be maintained, are against natural justice, and are an invasion of the private right of property, and in so far as they authorize the taking of said real estate of said William Marvin to satisfy a judgment at law against his tenants James Clifford and Jacob Gassman, who had possession under a valid lease from said William Marvin for lawful purposes, and in favor of said Belle B. Trout who lost no money by said gaming, and had no personal claim against said William Marvin, the said sections are unconstitutional and void. They violate divers provisions of the Constitution of the United States, and of the amendments thereto.

j 8. Other errors are apparent on the record.

Wherefore said plaintiff in error prays that said judgment against him may be reversed, annulled and altogether held for naught, that his said real estate may be relieved from the lien of the same, and that he be restored to all things he has lost by said judgment and proceedings against him.

GEO. F. PENDLETON,
ALFRED GRABER,
Attorneys for Plaintiff in Error.

k [Endorsed:] 8417 William Marvin *vs.* Belle B. Trout Assignment of errors in Supreme Court of United States Filed Apr. 12 1904 Supreme court of Ohio. L. E. Emerson, clerk. Geo. F. Pendleton, Alfred Graber & Geo. H. Phelps att'ys for Wm. Marvin

l *Order Allowing Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Ohio.*

Supreme Court of the State of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } No. 8417.

The above entitled matter coming on to be heard upon the petition of said William Marvin, plaintiff in error therein for a writ of error from the Supreme Court of the United States to the supreme court of the State of Ohio, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be, and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner William Marvin be, and the same is hereby approved.

WILLIAM T. SPEAR,
Chief Justice of the State of Ohio.

[Endorsed:] 8417 William Marvin *vs.* Belle B. Trout. Order allowing writ of error from the Supreme Court of the United States to the supreme court of the State of Ohio. Filed Apr. 12 1904 Supreme court of Ohio. L. E. Emerson, clerk.

m *Bond on Writ of Error from Supreme Court to State Supreme Court.*

Supreme Court of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } Case 8417. (Bond in Duplicate.)

Know all men by these presents that we, William Marvin as principal and John A. Scott and R. W. Moore as sureties, are held and firmly bound unto Belle B. Trout in the sum of one thousand dollars ($1,000) to be paid to the said obligee, her representatives, and assigns; to the amount of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 9th day of April A. D 1904.

Whereas the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the supreme court of the State of Ohio.

Now, therefore the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

WM. MARVIN. [SEAL.]
JNO. A. SCOTT. [SEAL.]
R. W. MOORE. [SEAL.]

I hereby approve the foregoing bond and sureties this 12th day of April A. D. 1904.

WILLIAM T. SPEAR,
Chief Justice of the Supreme Court of the State of Ohio.

I hereby certify that the foregoing signers of said bond are good for the amount of the same.

[Seal Common Pleas Court of the County of Hancock, Ohio.]

P. W. EWING,
Clerk of Courts, Hancock County, Ohio.

[Endorsed:] 8417 William Marvin *vs.* Belle B. Trout Bond—$1,000 On writ of error from Supreme Court of United States to supreme court of State of Ohio Filed Apr. 12 1904 Supreme court of Ohio. L. E. Emerson, clerk.

n *Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Ohio.*

THE UNITED STATES OF AMERICA, ss:

To the honorable judges of the supreme court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Ohio, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in said suit between William Marvin, plaintiff in error, and Belle B. Trout, defendant in error, being case number 8417 in the supreme court of Ohio, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State on the ground of their being repugnant to the Constitu-

tion, amendments, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or amendments, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, amendments, treaty, statute, or commission, a manifest error hath happened, to the great damage of said plaintiff in error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 18th day of May A. D. 1904, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

o Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 16th day of April in the year of our Lord A. D. 1904.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD,
Clerk of the Circuit Court of the United States
for the Northern District of Ohio,
By B. C. MILLER, *Deputy Clerk.*

Allowed by

WILLIAM T. SPEAR,
Chief Justice of the State of Ohio.

p [Endorsed:] 8417 William Marvin *vs.* Belle B. Trout Writ of error from Supreme Court of the United States to supreme court of Ohio. Filed Apr. 18 1904 Supreme court of Ohio. L. E. Emerson, clerk.

q *Citation on Writ of Error from Supreme Court of the United States to the Supreme Court of the State of Ohio.*

Supreme Court of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error.
} Case 8417. Citation on Writ of Error.

UNITED STATES OF AMERICA, *ss:*

To Belle B. Trout, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein William Marvin is plaintiff in error and you are the defendant in error, it being case number 8417 in the supreme court of Ohio, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William T. Spear, chief justice of the State of Ohio, this 18th day of April, A. D. 1904.

WILLIAM T. SPEAR,
Chief Justice of the State of Ohio.

[Endorsed:] 8417 William Marvin *vs.* Belle B. Trout Citation to defendant On writ of error from the Supreme Court of the United States to supreme court of State of Ohio. Filed Apr. 18, 1904 Supreme court of Ohio. L. E. Emerson, clerk.

r *Return of Service of Citation and Writ of Error.*

Supreme Court of the United States to the Supreme Court of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error.
} Case 8417. Supreme Court of Ohio.

Return on citation. Affidavit. (Attached to original citation.)

UNITED STATES OF AMERICA, *ss:*

THE STATE OF OHIO,
Hancock County,
} *ss:*

On this 21st day of April in the year of our Lord one thousand, nine hundred and four, personally appeared before me, clerk of

the circuit court of Hancock county, State of Ohio, Ira Bushong, sheriff of said Hancock county, and makes oath that he delivered to said defendant in error Belle B. Trout a true copy of the original writ of error in this case duly certified as such by the clerk of the supreme court of Ohio; and also at the same time he delivered to her a true copy of the within original citation in this case duly certified as such by the clerk of the supreme court of Ohio, said copy of the writ of error, and said copy of the within citation being under the seal of the supreme court of Ohio, and delivered to her personally this 21st day of April, A. D. 1904.

IRA BUSHONG,
Sheriff of Hancock County, Ohio.

Sworn to and subscribed before me, at the city of Findlay, this 21st day of April, A. D. 1904.

[Seal of the Circuit Court of Ohio, Hancock County.]

P. W. EWING,
Clerk of the Circuit Court of Hancock County, Ohio.

[Endorsed:] 8417 William Marvin *vs.* Belle B. Trout Sworn return of service of exemplified copies of writ of error, and of citation. From the Supreme Court of the United States to the supreme court of Ohio. Filed Apr. 22, 1904. Supreme court of Ohio. L. E. Emerson, clerk. Geo. F. Pendleton, att'y, Findlay, Ohio.

8 WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error. } Case 8417.

On this 22 day of April A. D. 1904 this case was further heard upon the application of plaintiff in error by Geo. F. Pendleton, his attorney, for an order from this court to the court of common pleas of Hancock county, Ohio, to recall and retire the order of sale lately issued by the clerk of the court of common pleas of said county, and now in the hands of the sheriff of said county. Upon consideration whereof, and it appearing that on the twelfth day of this month a writ of error was duly allowed by the Hon. William T. Spear, chief justice of the supreme court of Ohio from the Supreme Court of the United States to the supreme court of Ohio, in this case, and a supersedeas bond in the sum of one thousand dollars was approved by him and filed, and that on the sixteenth day of this month a writ of error in this case was issued and signed by the clerk of the circuit court of the United States for the northern district of Ohio returnable on May eighteenth, A. D. 1904 to the Supreme Court of the United States, and that a citation was issued thereon signed by said chief justice of Ohio, and it further appearing that an exemplified copy of said writ has been deposited in the office of the clerk of this court for the use of said Belle B. Trout, defendant in error herein, and

that the same together with an exemplified copy of said citation under the seal of this court was on April 21st A. D. 1904 served upon her personally by the sheriff of said Hancock county, who has made return thereof to this court; it is therefore ordered that said supersedeas so allowed be made effectual to abide the issue made upon said writ of error in the Supreme Court of the United States, and that the clerk of the court of common pleas of said Hancock county recall the said order of sale, and that no further execution be issued in the case until the further order of the court herein.

It is further ordered that a copy of this entry be certified to said court of common pleas.

[Endorsed:] 8417. William Marvin *vs.* Belle B. Trout. (Entry—For supreme court — Ohio) Supersedeas order recalling execution. See Ohio Stat. § 442, 443; U. S. Stat. § 1007. 2 Loveland Forms, p. 1623 notes. Geo. F. Pendleton, att'y for plaintiff.

Certified Transcript of Docket and Journal Entries.

THE STATE OF OHIO, *City of Columbus,* } ss:

In the Supreme Court of Ohio, January Term, A. D. 1904.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

WILLIAM MARVIN, Plaintiff in Error, *vs.* BELLE B. TROUT, Defendant in Error. } No. 8417. Error to the Circuit Court of Hancock County.

April 27, 1903. Petition in error, waiver, circuit court transcript, original papers and bill of exceptions filed.
" " " Papers sent Toledo Legal News Co., Toledo, O.
June 18, " " returned.
" " " Printed record and proof of service filed.
July 9, " Pl'ff's printed brief filed. 9-24-03, Proof of service filed.
Nov. 9, " Def't's printed brief filed in No. 8416.
Dec. 26, " Pl'ff's printed reply brief filed in No. 8416.
Mar. 15, 1904. Journal entry:

This cause came on to be heard upon the transcript of the record of the circuit court of Hancock county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable

grounds for this proceeding in error, it is ordered that no penalty be assessed herein.

It is further ordered that the defendant in error recover from the plaintiff in error her costs herein expended, taxed at $—.

Ordered, that a special mandate be sent the court of common pleas of Hancock county, to carry this judgment into execution.

Ordered, that a copy of this entry be certified to the clerk of the circuit court of Hancock county, "for entry."

Journal No. 19, page 414.

Mar. 22, 1904. Mandate issued.
" " " Original papers sent clerk.
Apr. 12, " Entry of certification filed.
" " " Journal entry:

Whereupon, on motion of said plaintiff in error, William Marvin, the court order it to be certified and made part of the record of this case and of the judgment of affirmance heretofore entered herein, that this action is founded upon sections forty two hundred and seventy-three (4273) and forty two hundred and seventy-five (4275) of the Revised Statutes of Ohio on the subject of gaming.

" It is further certified that said plaintiff in error set up in his petition in error, asking the reversal of the judgment of the circuit court of Hancock county, Ohio; that said sections of said statutes and the proceedings of said circuit court had thereunder were repugnant to section one, article fourteen of the amendments of the Constitution of the United States, and repugnant to article one, section nine and article one, section ten, and section three of article three of said United States Constitution. Also that said sections of said statutes and the proceedings had thereunder were claimed and set up by plaintiff in error to be an invasion of his private right of property in violation of the spirit of said Constitution and amendments. That said judgment of affirmance was in favor of the validity of said statutes and of said proceedings had thereunder, and that they were not repugnant to any of the provisions of said Constitution or of the amendments thereto.

It is further certified that this court is the highest court of law or equity in the State of Ohio in which a decision can be had in this case.

Journal No. 19, page 458.

Apr. 18, 1904. Copy of entry of certification sent clerk of courts.
" 12, " Petition for writ of error filed.
" " " Assignment of errors filed.
" " " Bond in duplicate filed. (Bond, $6,000.00.)
" " " Order allowing writ of error filed.
" 18, " Writ of error filed.
" " " Citation on writ of error filed.
" 19, " Citation issued to sheriff of Hancock county, to be served upon Belle B. Trout.
" 22, " Sworn return of service of writ of error and citation returned by sheriff of Hancock county.
" 22, 1904. Journal entry:

On this 22 day of April, A. D., 1904, this case was further heard upon the application of plaintiff in error by Geo. F. Pendleton, his attorney, for an order from this court to the court of common pleas of Hancock county, Ohio, to recall and retire the order of sale lately issued by the clerk of the court of common pleas of said county, and now in the hands of the sheriff of said county. Upon consideration whereof, and it appearing that on the twelfth day of this month a writ of error was duly allowed by the Hon. William T. Spear, chief justice of the supreme court of Ohio from the Supreme Court of the United States to the supreme court of Ohio in this case, and a supersedeas bond in the sum of one thousand dollars was approved by him and filed, and that on the sixteenth day of this month a writ of error in this case was issued and signed by the clerk of the circuit court of the United States for the northern district of Ohio, returnable on May eighteenth, A. D., 1904, to the Supreme Court of the United States, and that a citation was issued thereon signed by said chief justice of Ohio, and it further appearing that an exemplified copy of said writ has been deposited in the office of the clerk of this court for the use of said Belle B. Trout, defendant in error herein, and that the same, together with an exemplified copy of said citation under the seal of this court, was on April 21st, A. D., 1904, served upon her personally by the sheriff of said Hancock county, who has made return thereof to this court; it is, therefore, ordered that said supersedeas so allowed be made effectual to abide the issue made upon said writ of error in the Supreme Court of the United States, and that

the clerk of the court of common pleas of said Hancock county recall the said order of sale, and that no further execution be issued in the case until the further order of the court herein.

v It is further ordered that a copy of this entry be certified to said court of common pleas.

Apr. 23, 1904. Copy of entry allowing supersedeas bond sent clerk of courts of Hancock county, O.

w Supreme Court of the State of Ohio.

STATE OF OHIO, }
City of Columbus. }

I, Lawson E. Emerson, clerk of the supreme court of Ohio, do hereby certify that the foregoing petition for writ of error, assignments of error, order allowing writ of error, bond, writ of error, citation and sworn return of service are the original papers filed in this court in the case of William Marvin, plaintiff in error, against Belle B. Trout, defendant in error; that the printed copy of the record attached hereto is a true and correct copy of the printed record filed in said supreme court and used in the consideration of said cause and that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the records of said court in said cause.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this 25th day of April, A. D., 1904.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

z In the Supreme Court of the State of Ohio.

WILLIAM MARVIN, Plaintiff in Error, }
against } No. 8417.
BELLE B. TROUT, Defendant in Error. }

Error to the circuit court of Hancock county.

Record.

Geo. F. Pendleton, Geo. H. Phelps, Alfred Graber, J. A. Bope, attorneys for plaintiff in error.

Poe & Poe, attorneys for defendant in error.

Filed Jun- 18 1903 Supreme court of Ohio.

L. E. EMERSON, *Clerk.*

1 In the Supreme Court of the State of Ohio.

WILLIAM MARVIN, Plaintiff in Error,
against
BELLE B. TROUT, Defendant in Error.

Petition in Error.

(Filed April 27, 1903.)

The plaintiff in error says that at the December term A. D. 1902, of the circuit court of Hancock county, Ohio, to-wit, on January 26, 1903, as shown by the record, the said Belle B. Trout, as plaintiff, recovered a judgment against said William Marvin, as defendant, and an order and decree of said circuit court directing a sale of certain real estate of said William Marvin to satisfy such judgment, in a certain action then pending in said circuit court numbered 966, the same upon appeal of cause numbered 12311 from the
2 court of common pleas of said Hancock county, between the same parties; and at the same time obtaining a finding of facts and of law in her favor against him, said William Marvin, all by the consideration of said circuit court; a transcript of the docket and journal entries in said cause, and the original papers and pleadings and transcripts used and referred to in said trial in said circuit court, together with the bill of exceptions, the motion for a new trial, and the motion to make the finding of facts more definite and certain, are filed with this petition in error.

Plaintiff in error further says that there are errors appearing upon the record and proceedings aforesaid, in this, to-wit:

First. Said circuit court erred in refusing to grant the motion of said William Marvin for a new trial.

Second. Said circuit court erred in refusing to grant the motion of said William Marvin to find from the evidence the facts that warrant the conclusion that said William Marvin "had actual knowledge" of the alleged gambling, and the facts from which the conclusion is made up that he "knowingly permitted" said premises to be used for gambling purposes.

Third. Said findings of said circuit court that said William Marvin "had actual knowledge" of, or that he "knowingly permitted" said gambling upon his said premises in the record described, are not sustained by the facts set forth in the bill of exceptions; nor by the evidence adduced at the trial.

3 *Fourth.* The facts found by said circuit court are not sustained by the evidence.

Fifth. The conclusions of law found by said circuit court are not sustained by the evidence; nor by the facts as found.

Sixth. The findings, decision and judgment of said circuit court

are not sustained by sufficient evidence, nor by competent evidence; and the same are contrary to the evidence.

Seventh. The findings, decision and judgment of said circuit court are contrary to law.

Eighth. Said findings, decision and judgment are for a sum greatly in excess of the sum of money alleged to have be-n lost by said Frank H. Trout in said gambling to said James Clifford and Jacob Gassman; and said circuit court erred in adjudging against said William Marvin in said action in said circuit court the costs and interest that had been adjudged against said James Clifford and Jacob Gassman in said suit against them; and said circuit court erred in adjudging that said William Marvin pay to said Belle B. Trout the interest that had accrued upon said judgment against said James Clifford and Jacob Gassman, and to which judgment said William Marvin was not a party.

Ninth. Said circuit court, in said findings, decision and judgment, exercised an undue and unconstitutional use of the supposed police power of the State of Ohio. That the result thereof, if said
4 sale be made as ordered, and adjudged by said circuit court, is, and will be the forfeiture of the fee of his said real estate; and a forced seizure and sale thereof for the private benefit of said Belle B. Trout, to whom said William Marvin owed no duty, debt or obligation.

Tenth. The said circuit court erred in giving to said section forty-two hundred and seventy-three (4273) of the statutes of Ohio scope and effect as against said William Marvin; and erred in not holding said section forty-two hundred and seventy-three (4273) to be unconstitutional and void.

Eleventh. The said circuit court erred in giving to section forty-two hundred and seventy-five (4275) of the statutes of Ohio, upon which said action in said circuit court is founded, scope and effect as against said William Marvin; and erred in not holding said section forty-two hundred and seventy-five (4275) to be unconstitutional and void.

Twelfth. Said findings, decision and judgment of said circuit court violate the constitution of Ohio in this, to-wit:

(*a.*) They in effect violate art. I, sec. 1, of the bill of rights by depriving said William Marvin of the right of "enjoying" and "possessing" his said real estate. The same not having been in any manner alienated by him; nor liable for any tax, assessment, or public charge, nor taken for any public use.

(*b.*) They in effect violate art. I, sec. 5, of said bill of rights, which guarantees to said William Marvin "the right of trial
5 by jury." Whereas said suit was brought as a suit in equity to enforce an alleged lien, the legality of which was not triable by jury, and said findings, decision and judgment herein complained of were by the consideration of said circuit court, which has no jurisdiction to provide and secure a jury trial.

(*c.*) They in effect violate art. I, sec. 16, of said bill of rights

by making his said real estate liable to be sold to pay a debt or charge not created by his own act or violation, nor adjudged against him "by due course of law."

(*d.*) They in effect violate art. I, sec. 19, of said bill of rights, which provides that "private property shall ever be held inviolate, but subservient to the public welfare." Whereas, by the consideration of said circuit court, the said real estate of this plaintiff in error is adjudged to be taken from him by the public, and ostensibly for the public good, but in fact for the private use and benefit of said Belle B. Trout, and as a pretended bonus or gift to her by the State of Ohio out of the said real estate, and the proceeds thereof.

(*e.*) They in effect violate art. II, sec. 28, of the constitution of the State of Ohio "by impairing the obligation" of the contract of deed and his title whereby he holds his right to possess and enjoy his said real estate.

(*f.*) They in effect violate the substance, and the spirit of the said State constitution under the guise of enforcing the supposed police power of the State in an excessive, unreasonable and un-
6 necessary manner, to-wit, by the seizure and forced sale of said property, which is in effect a forfeiture and confiscation thereof. Whereas ample police power is vested in the State of Ohio to abate gambling places, and to punish gamblers, and any who may aid and abet them, without resorting to the forfeiture or confiscation of the real estate upon which the supposed gambling has been done.

(*g.*) Said findings, decision and judgment are, in effect and results, a violation of art. I, sec. 9, of said constitution of Ohio, which prohibits "excessive fines" and "cruel and unusual punishments," inasmuch as said Belle B. Trout is not shown to have been injured either in her person, her reputation, or her estate, by any act or omission done or suffered by said William Marvin.

(*h.*) Said circuit court erred in its said findings, decision and judgment, in holding that said William Marvin had actual knowledge of said gambling, and knowingly permitted the same, and was therefore liable to have his said real estate taken away from him without a trial and conviction under the next section of the statutes, to-wit: section forty-two hundred and seventy-six (4276) as a principal offender; the said findings, decision and judgment of said circuit court making him to appear to be guilty as a principal, and the punishment meted out to him being the same as if tried by a jury and found guilty as a principal offender.

Thirteenth. Said findings, decision and judgment of said cir-
7 cuit court violate in effect and results, section one (1) of article fourteen (XIV) of the amendments to the Constitution of the United States, which provides, to-wit, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Plaintiff in error avers, and claims that said violations are apparent in the following particulars, to-wit:

(*a.*) That he is a citizen of the United States, and as such entitled to be protected against said statutes of Ohio, and said decision of said circuit court made thereunder, to the same extent as if said findings, decision and judgment were made and rendered by a court of the United States.

(*b.*) He claims, and avers that his privileges and immunities have been abridged as a citizen of the United States by said statutes of Ohio, and said decision, because they in scope and effect, amount to an attainder as to his said real estate, and forfeiture of the same, even beyond his own life, which is prohibited by article I, section 9, of said Constitution of the United States in these words, to-wit: "No bill of attainder or *ex post facto* law shall be passed." And said decision was made to have a *post facto* effect to operate as a lien upon his said real estate, by declaring the former judgment taken by said Belle B. Trout against said James Clifford and Jacob
8 Gassman, to which said William Marvin was not a party, to operate as a subsequent lien on said real estate of said William Marvin.

(*c.*) He claims, and avers that said sections of said statutes, and said decision complained of are a violation of article I, section 10, of the Constitution of the United States, which provides among other things, that "No State shall * * * pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." * * * He avers that all the consequences of attainder to the full extent of forfeiture of his said real estate in fee simple are imposed upon him by said State of Ohio; and the obligation of his contract of deed whereby he holds title, and the evidence thereof is cut off and destroyed.

(*d.*) He claims and avers that the consequence and effect of said sections of said statutes, and said decision thereunder, visit upon him a punishment greater than is provided for the crime of treason by section 3 of article III of said Constitution of the United States, which prohibits a forfeiture except during the life of the person attain-ed; and which punishment without conviction of any crime known to the law, is unreasonable.

(*e.*) He avers, and claims that the consequences of said proceedings and judgment against him, and the effect thereof, deprive him of his said property and real estate "without due process of law," within the said section 1, of said article fourteen (XIV) of the amendments to said Constitution of the United States.

(*f.*) He avers and claims that upon the face of said record
9 and proceedings of said circuit court he owed no debt, or obligation, or duty to said Belle B. Trout to be compensated by any compensation moving from him to her, and that the legal effect and result is that his said real estate is confiscated and the proceeds given to her to the extent, at least, of said judgment, interest and costs, and without opportunity to have a jury to pass upon

the questions, whether said Frank H. Trout in fact lost any money by gambling with said James Clifford and Jacob Gassman; whether if he did, his gains did not exceed his losses; whether if in fact said Belle B. Trout did not encourage him in said gambling, and was content with his gains, and sought to recover his losses, allowing him to pocket his gains; whether there was collusion between the parties in the recovery of said alleged judgment against said James Clifford and Jacob Gassman; whether said gambling was done upon the said real estate of said William Marvin; whether he knowingly permitted the building upon said real estate to be used by said James Clifford and Jacob Gassman for gaming purposes; the sum of money, if any, actually lost by such gaming, and all the essential elements triable by jury not having been submitted by the court to a jury, and a jury not being waived, constitute in fact and effect the taking of his said property without due process of law, within the purview and prohibition of said fourteenth amendment.

Fourteenth. The said sections of the statutes of Ohio, and said proceedings of said circuit court, violate the constitution of Ohio, and the Constitution of the United States, and the amendments thereto in particulars other than as above specially mentioned; and there are divers errors in the record and proceedings other than those herein pleaded, none of which plaintiff in error waives.

Fifteenth. Plaintiff in error says the errors herein complained of are prejudicial to him, and have been preserved in the record by exception where necessary to obtain a review of said findings, decision and judgment of said circuit court.

The plaintiff in error prays that said findings, decision and judgment of said circuit court be reversed and held for naught; and that he may be restored to all things he has lost by reason thereof.

GEO. F. PENDLETON,
GEO. H. PHELPS,
ALFRED GRABER,
J. A. BOPE,
Attorneys for Plaintiff in Error.

The defendant in error waives the issuing and service of summons in error, and enters her appearance in the supreme court of Ohio upon the plaintiff in error filing the foregoing petition in error therein.

POE & POE,
Attorneys for Defendant in Error.

Dated April 24, 1903.

11 THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

BELLE B. TROUT, Plaintiff, }
against }
WILLIAM MARVIN, Defendant. }

Petition.

(Filed in Common Pleas March 9, 1897.)

The plaintiff says:

The defendant, William Marvin, now is and continuously for more than four years, now last past, has been the owner of the following real estate situate in the county of Hancock and State of Ohio, and known as lot numbered eighty-six (86) in the city of Findlay, and the buildings thereon and appurtenances thereto belonging.

She says for many years last past, including all the period of time from March 19, 1894, to June 19, 1894, James Clifford and Jacob Gassman occupied rooms in said buildings on said lot and during all said time were therein engaged in carrying on the business of gaming and gambling for money in violation of law.

During all which time and during all said period from March 19, 1894, to June 19, 1894, the defendant, William Marvin, knowingly permitted his said rooms and buildings and lot to be so occu-
12 pied and used by said James Clifford and Jacob Gassman for gambling and gaming purposes in violation of law as aforesaid.

She says that at the September term, 1896, of the court of common pleas of said county of Hancock, State of Ohio, in a certain action then and theretofore therein pending, being cause numbered eleven thousand one hundred and thirty-eight (11138), wherein this plaintiff, Belle B. Trout, was plaintiff, and said James Clifford and Jacob Gassman were defendants, she, this plaintiff, by the consideration of said court, duly recovered a judgment against said James Clifford and Jacob Gassman in the sum of thirteen hundred dollars damages and the costs of said suit taxed at eleven and 23-100 dollars.

She says said action in which she recovered said judgment was an action brought by her against said James Clifford and Jacob Gassman, pursuant to the provisions of section forty-two hundred and seventy-three (4273) of the Revised Statutes of Ohio, embraced in chapter five of title five of said statutes, to recover from said James Clifford and Jacob Gassman money staked and betted by one Frank H. Trout, who is husband of plaintiff, with said James Clifford and Jacob Gassman on certain gaming transactions and in said gaming

transactions won by said James Clifford and Jacob Gassman from said Frank H. Trout, and by said Frank H. Trout paid over to said James Clifford and Jacob Gassman, as their winnings in said illegal gaming transactions off said Frank H. Trout, and which said judgment so by her recovered against said James Clifford and
13 Jacob Gassman and the amount thereof was for money found by the jury and said court in said cause to have been staked and betted by said Frank H. Trout with said James Clifford and Jacob Gassman on said gaming and gambling transactions and won by said James Clifford and Jacob Gassman from said Frank H. Trout, and by said Frank H. Trout as such winnings paid over to them.

Said judgment is still in full force, unmodified, not appealed, and no part of the same has ever been paid.

She says said money for which said judgment was so rendered in her favor in said cause against said James Clifford and Jacob Gassman was so staked, betted, lost and paid by said Frank H. Trout to said James Clifford and Jacob Gassman in said gaming transactions in said rooms and buildings on said lot of defendant within the period from March 19, 1894, to June 19, 1894.

That said money was so betted and lost in said gaming transactions at said time in and on said premises while defendant was knowingly permitting his said rooms, building, lot, and premises to be used and occupied for the purpose of gaming for money, and for the purposes of said games in which said money was so lost in violation of the laws of Ohio.

The plaintiff therefore prays the court for an order enforcing the lien of said judgment against said building and lot aforesaid, and for an order that said premises may be sold for the satisfaction of said judgment with interest thereon from the 21st day of September, 1896, the same she avers is the date of her said judgment,
14 and for costs, and for all the relief in law and equity she may be entitled to.

JOHN POE,
Attorney for Plaintiff.

(Verification omitted.)

In the Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

Answer.

(Filed April 10, 1897.)

And now comes the defendant, and for answer to the petition of the plaintiff filed herein, admits the ownership by him of the real

estate described in the petition, the occupancy of a part of said building by James Clifford and Jacob Gassman during the period stated in the petition. That plaintiff recovered a judgment against said James Clifford and Jacob Gassman at the time and for the amount stated in the petition, but further as to said petition the defendant denies the same and each and every allegation
15 thereof, and specifically denies that this defendant knowingly permitted his said rooms and building and property to be used by the said James Clifford and Jacob Gassman for gambling purposes, and says that if the said James Clifford and Jacob Gassman while they occupied the premises of this defendant were therein engaged in carrying on the business of gambling and gaming for money in violation of law this defendant had no knowledge thereof, and in no manner consented thereto.

Second.

And for a second and further answer this defendant says: That this plaintiff ought not to have and maintain this action for the reason, that heretofore and some time prior to September, 1896, the said plaintiff commenced an action in this court, being cause No. 11138, wherein plaintiff was plaintiff, and this defendant and others were defendants, being the same cause mentioned in petition, wherein the said plaintiff undertook in said action to recover from this defendant the same sum of money which she seeks to recover in this action; being money which she therein alleged had been lost by her husband while gambling with the said James Clifford and Jacob Gassman, on the premises described in the petition and within the time stated in the petition.

That the plaintiff failed in said action to recover against this defendant for the reason that she negligently, or intentionally omitted in her petition, in said action to allege against this defendant
16 any facts showing his liability under the provisions of the statute, so that said action No. 11138 is a bar to the maintenance of this action.

Wherefore defendant prays that he may be hence dismissed.

J. A. & E. V. BOPE,
E. L. DUNN,
ALFRED GRABER, AND
GEO. H. PHELPS,
Attorneys for Defendant.

(Verification omitted.)

17 Court of Common Pleas, the State of Ohio, Hancock County.

BELLE B. TROUT, Plaintiff,
against
WILLIAM MARVIN, Defendant.

Reply.

(Filed August 27, 1897.)

Now comes the plaintiff, Belle B. Trout, and leave of the court first had and obtained, for her reply to the answer of defendant herein filed says:

Admitting that when said action No. 11138, in which the judgment set forth in the petition herein was rendered was commenced said William Marvin was included as a defendant, but she says long before the same came on for trial and long before the rendition of said judgment, that said case had been dismissed as to said William Marvin without prejudice, so that when the said cause was tried and said judgment rendered said William Marvin was not a party and none of the issues between the parties in this case were involved or tried in said cause No. 11138.

She denies each and every other allegation in said answer contained and prays — in her petition she hath prayed.

JOHN POE,
Attorney for Plaintiff.

(Verification omitted.)

18 In the Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT
vs.
WILLIAM MARVIN.

Amendment to Answer.

(Filed November 27, 1897.)

And now comes the defendant, leave of court for that purpose being first had, and for an amendment, and in addition to the matters set forth in his original answer filed herein, says that the plaintiff's cause of action set forth in the petition, if any she had, as therein stated, was barred by the statute of limitation of Ohio at the time she commenced her action herein.

PHELPS & DUNN,
J. A. & E. V. BOPE,
E. T. LAW, AND
ALFRED GRABER,
Attorneys for Defendants.

(Verification omitted.)

19 Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

Reply to Amendment to Answer.

(Filed November 30, 1901.)

Now comes the plaintiff and for her reply to amendment to answer filed herein by defendant, November 27, 1901, denies each and every allegation in said amendment to answer contained.

JOHN POE,
Attorney for Plaintiff.

(Verification omitted.)

20 *Transcript of Journal Entries.*

(Filed in Circuit Court March 18, 1902.)

THE STATE OF OHIO:

Court of Common Pleas of Hancock County, January Term, A. D. 1902.

At a term of the court of common pleas within and for the county of Hancock, in the State of Ohio, begun and held at Findlay on the 6th day of January, A. D. 1902, before Hon. Charles M. Melhorn, presiding judge, among other proceedings then and there had by and before said court, as appears by its journal, is the following, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 12311.

By order of court this cause is continued to the next term thereof. Journal vol. 33, page 490. Dated June 29, 1897.

And on the 5th day of November, 1897, the following entry was made on Journal vol. 34, page 144, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
W.M MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

21 And on the 5th day of January, 1898, the following entry was made on Journal vol. 34, page 254, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 8th day of April, 1898, the following entry was made on Journal vol. 34, page 463, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 14th day of November, 1898, the following entry was made on Journal vol. 35, page 343, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof

22 And on the 9th day of February, 1899, the following entry was made on Journal vol. 35, page 488, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 6th day of April, 1899, the following entry was made on Journal vol. 36, page 23, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By agreement of counsel this cause is continued to the next term thereof.

And on the 13th day of December, 1899, the following entry was made on Journal vol. 36, page 413, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 13th day of February, 1900, the following entry
23 was made on Journal vol. 36, page 549, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued by agreement to the next term of this court.

And on the 26th day of June, 1900, the following entry was made on Journal vol. 37, page 115, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 10th day of December, 1900, the following entry was made on Journal vol. 37, page 414, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

24 And on the 5th day of March, 1901, the following entry was made on Journal vol. 38, page 29, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 29th day of April, 1901, the following entry was made on Journal 38, page 180, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

By order of court this cause is continued to the next term thereof.

And on the 27th day of November, 1901, the following entry was made on Journal vol. 38, page 554, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

On application of the defendant, leave is granted to him to file an amendment to his answer herein instanter, which is accordingly now filed, a-d this cause is continued.

25 And on the 14th day of March, 1902, the following entry was made on Journal vol. 39, page 278, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

On this 14th day of March, 1902, came the said parties, with their attorneys, and thereupon this cause came on and was heard by the court upon the petition of the said plaintiff, the answer of said defendant, the reply of plaintiff to said answer, the amendment of defendant to his said answer and the reply of plaintiff thereto, and the evidence, and was argued by counsel; on consideration whereof, and being fully advised in the premises, the court find that the facts stated and allegations in said petition of plaintiff are true as therein set forth. That the equity of this case is with the said plaintiff. That the plaintiff is entitled to the relief sought in her petition herein. That there is now due to the said plaintiff from said James Clifford and Jacob Gassman upon said judgment in her petition mentioned the said principal sum of thirteen hundred dollars, together with the interest thereon to this date the further sum of four hundred and twenty-six dollars, in all of seventeen hundred twenty-six dollars and the costs of said case, for which judgment was also rendered as alleged in the petition herein the further sum of $1,428. That the said real estate in the petition described, to-wit, situate
26 in the city of Findlay, county of Hancock and State of Ohio, known and described as lot number eighty-six (86) in said city, and the buildings thereon, is liable for said judgment and ought to be sold for the payment of the same. That the said judg-

ment should be, and the same hereby is declared and decreed to be and to constitute a good and valid lien upon said real estate for the amount of said judgment. The court further find that the plaintiff is entitled to have said real estate sold by the sheriff of said county for the payment and satisfaction of said judgment. It is further ordered and adjudged that the plaintiff recover from the defendant her costs in this case expended taxed at $—, and that the defendant pay the costs by him and made herein.

It is therefore adjudged and decreed that the lands and tenements mentioned and described in plaintiff's petition herein, to-wit, situate in the city of Findlay, county of Hancock, and State of Ohio, and being lot number eighty-six (86) in said city, and the buildings thereon, be sold according to law by the sheriff of Hancock county, Ohio, and that out of the proceeds of said sale he pay the taxes and assessments then on said premises; second, the costs and increase costs herein; third, to the said plaintiff the said sum of seventeen hundred and twenty-six dollars, with interest on said principal sum of thirteen hundred dollars thereof from this date, and the residue, if any, he pay to the said William Marvin on demand, and it is further ordered that an order of sale issue to the said sheriff to carry the foregoing judgment into effect.

On motion and for good cause shown advertisement of
27 sale herein in a German newspaper is hereby dispensed with.

The defendant gave notice of his appeal of this cause to the circuit court of Hancock county, and the court fixed the bond for such appeal at 100 dollars.

I, P. W. Ewing, clerk of the common pleas court of Hancock county, Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

Witness my hand and the seal of said court at Findlay, this 18th day of March, A. D. 1902.

[SEAL.]

P. W. EWING, *Clerk*,
By W. P. ALSPACH, *Deputy*.

28 In the Circuit Court of Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 966.

Motion to Dismiss Appeal.

(Filed December 18, 1902.)

(Filed in Supreme Court April 27, '03.)

Now comes the plaintiff and moves the court to dismiss the appeal in this case for the reasons following:

1. That this is not a civil action.
2. That this is a special proceeding.
3. That this is a proceeding in which a remedy was sought by an original application to the court of common pleas for judgment and order, and is a special proceeding.
4. That this is a special proceeding under a special statute and which statute does not provide for an appeal in such case.
5. That this case was a summary application to the court of common pleas in an action after judgment, and is a special proceeding from which no appeal lies according to the laws of Ohio.
6. This case is not appealable from the common pleas to the circuit court under the laws of Ohio.

JOHN POE,
Attorney for Plaintiff.

29 *Transcript of Journal Entries, Supreme Court.*

(Filed in Supreme Court April 27, 1903.)

THE STATE OF OHIO:

Circuit Court of Hancock County, December Term, A. D. 1902.

At a term of the circuit court, within and for the county of Hancock, in the State of Ohio, begun and held at Findlay, on the 9th day of December, A. D. 1902, before Hon. S. M. Douglass, presiding judge, and Hon. R. M. Voorhees and Hon. M. H. Donahue, judges, among other proceedings then and there had by and before said court, as appears by its journal, is the following, to-wit:

BELLE B. TROUT, Plaintiff in Error,
vs.
WILLIAM MARVIN, Defendant in Error. } No. 966.

M'ch 18, 1902.—Appeal bond filed.
M'ch 18, 1902.—Transcript filed.
M'ch 18, 1902.—Six original papers filed.
Dec. 18, 1902.—Motion to dismiss appeal filed.
Jan. 13, 1903.—Motion for new trial filed.
Jan. 26, 1903.—Motion for new trial refiled.
Jan. 26, 1902.—Motion to revise facts, etc., filed 3:25 p. m.
Dec. term, 1902, to-wit Jan. 26, 1903.—Finding and decree for plaintiff. Judgment against defendant for costs. Execu-
30 tion awarded. Remanded to common pleas court for execution and further proceedings according to law. Defendant excepts. Motion for new trial overruled. Ex. 20 days allowed for finding of fact. Statutory time for bill of exceptions.
Feb. 24, 1903.—Bill of exceptions filed.

Feb. 24, 1903.—Notice of filing of bill of exceptions mailed to John Poe, attorney for plaintiff.
Mar. 19, 1903.—Bill of exceptions transmitted to trial judges.
Mar. 25, 1903.—Bill of exceptions received from trial judges.

And on the 21st day of May, 1902, the following entry was made on Circuit Court Journal vol. 4, page 182, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 966.

Appeal.

By order of court this cause is continued to the next term thereof.

31 And on the 18th day of December, 1902, the following entry was made on Circuit Court Journal vol. 4, page 244, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

Appeal.

This day came the parties with their attorneys, and thereupon this cause came on to be heard before the Hon. S. M. Douglass, Hon. R. M. Voorhees and Hon. M. H. Donahue, upon the original papers and pleadings, the transcript of record from the court of common pleas, and the evidence. And hearing heard the evidence adduced in part, the hour of adjournment having arrived the court postponed the further hearing of this cause, until tomorrow morning at 9 o'clock.

And on the 19th day of December, 1902, the following entry was made on Circuit Court Journal vol. 4, page 247, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

This day again came the parties with their attorneys, and this cause was further heard upon the evidence and arguments of counsel, and was submitted to the court to be taken under advisement.

32 And on the 26th day of January, 1903, the following entry was made on Circuit Court Journal vol. 4, page 271, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant.

On this 26th day of January, 1903, again came the said parties, with their attorneys, and this cause having at a former day of this December term, 1902, of this term, been submitted to the court, upon the pleadings and evidence and arguments of counsel, and the court being fully advised in the premises, on the request of the defendant that its conclusions of fact be stated separately from its conclusions of law, find as its conclusions of fact:

1. That during the period mentioned and referred to in plaintiff's petition herein, to-wit, March 19th, 1894, to June 19th, 1894, and for a long time before and ever since, the defendant, William Marvin, was and has been the owner in fee of the following described real estate situate in the city of Findlay, Hancock county, Ohio, to-wit: twenty-nine and one-half feet off of the south side of lot number eighty-six described in the petition in said city with all the buildings thereon, which described part of said lot and said buildings thereon is referred to in this entry by the
33 designation, "said real estate," and said period of time from March 19th, 1894, to June 19th, 1894, is referred to in this entry by the designation, "said period."

2. That during all "said period" James Clifford and Jacob Gassman held and occupied "said real estate" under a lease from defendant as tenants of said William Marvin and were engaged in and upon "said real estate" in the business of gaming and gambling for money at games of chance in violation of the laws of the State of Ohio, and of the provisions of chapter five, title five, of the Revised Statutes of the State of Ohio.

That within "said period" one Frank H. Trout, husband of said plaintiff, in and upon "said real estate" engaged with said James Clifford and Jacob Gassman in said games of chance and gambling operations so there and then conducted, and betted and wagered his money therein and thereon and lost at said gambling to said James Clifford and Jacob Gassman, who at said gambling won from said Frank H. Trout the sum of thirteen hundred dollars in money, which said sum said Trout then paid to them. That afterward at the September term, 1896, of the court of common pleas of said Hancock county, to-wit, on the 21st day of September, 1896, in an action therein theretofore duly brought by her pursuant to section 4273 of the Revised Statutes of Ohio, to recover said moneys so lost, the plaintiff by the consideration of said court, duly recovered a judgment therefor, against said James Clifford and Jacob Gassman, to-wit for said sum of thirteen hundred dollars,
34 the same being the amount of money found by said court in said action to have been so lost by said Frank Trout,

at said gaming and gambling with- "said period," and by him paid to said James Clifford and Jacob Gassman; also for the costs of said case in the sum of fourteen and 28-100 dollars, and that plaintiff, in consequence of said loss at gaming, sustained damages to the amount of such judgment.

4. That said judgment for thirteen hundred dollars was so rendered for said money so lost and paid by said Frank Trout to James Clifford and Jacob Gassman while so gambling with them within "said period" in and upon "said real estate," which said judgment for damages and costs is still in full force and effect, the same having never been reversed, modified or set aside, and no part thereof has been paid. That there is now due to the said plaintiff upon said judgment the said principal sum of thirteen hundred dollars, together with interest thereon to this date, the further sum of four hundred and ninety-four dollars and the costs of said case for which plaintiff also so recovered judgment the further sum of $14.28.

5. That during all "said period" the said defendant, William Marvin, had actual knowledge that said James Clifford and Jacob Gassman were so using "said real estate" for said gaming and gambling purposes aforesaid, and that they were therein and thereupon conducting and carrying on games of chance, games of gambling contrary to law as aforesaid, and knowingly
35 permitted his "said real estate" to be so used and occupied for said gaming and gambling purposes and for said games of chance at which said Frank Trout so lost said sum of money.

6. That within the year next after the date of the rendition of said judgment for said sum of money so lost, the plaintiff duly commenced this action in said court of common pleas of said Hancock county.

7. The court further find as a fact, that the cause of action herein was not adjudicated in cause No. 11689 on the civil docket of the common pleas court of Hancock county, as averred in the second defense of defendant's answer, and was not involved in said cause or the issue therein tried, but is wholly distinct and different therefrom, and is for a liability arising under a different section of the statutes, and requiring different and distinct proofs. This action being to subject the property in which the gambling enterprise was conducted to the payment of the judgment, the other action being to recover from defendant as winner.

As to its conclusions of law upon the above found facts, the court find:

1. Said action is not barred by the statute of limitations.

2. That the action No. 11138 in the court of common pleas of said Hancock county, mentioned and referred to in defendant's answer and therein plead as a bar to this action, the court find does not constitute a bar to this action.

36 3. That the equity of this case is with the plaintiff.

4. That the said real estate, to-wit: twenty-nine and one-half

feet off of the south side of said lot number eighty-six, described in the petition, situate in the city of Findlay, in said county of Hancock, and State of Ohio, and the buildings thereon is held liable for said judgment, interest and costs aforesaid, and ought to be sold for the payment of the same.

5. That said judgment should be, and the same hereby is, declared and decreed to be and the same to constitute a good and valid lien upon "said real estate" for the said amount.

6. The court further find that the plaintiff is entitled to have said real estate sold by the sheriff of said county of Hancock for the payment and satisfaction of said judgment, interest and costs, and that plaintiff is entitled to recover from defendant her costs in this case expended, and that defendant should pay the costs by him made.

It is therefore considered, adjudged and decreed by the court, that that portion of the lands and tenements mentioned in plaintiff's petition, described as follows, to-wit: twenty-nine and one-half feet off of the south side of lot number eighty-six, in the city of Findlay, Hancock county, Ohio, with the buildings thereon, be appraised, advertised and sold according to law by the sheriff of said Hancock county, and that out of the proceeds of said sale he pay:

37 1. The taxes and assessments then on the same.

2. The costs and increase costs herein.

3. To the said plaintiff the said sum of seventeen hundred and ninety-four dollars, with interest on said principal sum of thirteen hundred dollars from this date, and to the clerk of this court of common pleas said costs of said suit in which said judgment was rendered, to-wit: said sum of $14.28, and the residue, if any, he pay to the said William Marvin, on demand. And it is further ordered that an order of sale issue to the sheriff to carry the foregoing judgment and decree into effect.

It is further ordered that a special mandate be sent to the court of common pleas of Hancock county, Ohio, for execution and further proceedings upon said judgment and decree.

To all which the defendant at the time excepted, and here now excepts, and it is ordered that the journal of this case be kept open the statutory period for his bill of exceptions.

And on the 26th day of January, 1903, the following entry was made on Journal, vol. 4, page 275, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 966.

38 Thereupon this 26th day of January, 1903, came the said parties with their attorneys and thereupon this cause came on and was heard upon the motion of the defendant to set aside the finding of facts and conclusions of law, and the judgment and decree in

this case; on consideration whereof, and being fully advised in the premises, the court find that the said motion should be, and the same hereby is overruled and refused.

To all which action of the court the defendant at the time excepted and here now excepts and the court allows the statutory time to defendant for his bill of exceptions.

And on the 26th day of January, 1903, the following entry was made on Circuit Court Journal 4, page 274, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 966.

On this 26th day of January, 1903, again came the said parties, and thereupon this cause was submitted to the court on the motion of the defendant to make more definite and certain, on consideration whereof the court is of the opinion that the said motion should be, and the same hereby is, overruled and refused.

39 And on the 25th day of March, 1903, the following entry was made on Journal, vol. 4, page 281, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 966.

The bill of exceptions taken by the defendant having been filed with the clerk in this cause on February 25, 1903, after due notice thereof the same day to the attorney of plaintiff, who examined and approved such bill of exceptions, and no objection or amendment thereto having been filed, the said clerk, on March 19th, 1903, having duly transmitted said bill of exceptions to the trial judges, and such trial judges having endorsed thereon that they received the same on March 23, 1903, and they on the same day having found the same to be a true bill of exceptions, settled, allowed and signed the same as evidenced by the signatures of such trial judges thereto, it is now on this March 25, 1903, ordered on application of the defendant that said bill of exceptions be, and the same hereby is, filed with the papers of said cause and made a part of the record thereof, but the same is not to be spread upon the journal or final record of said cause.

I, P. W. Ewing, clerk of the circuit court of Hancock county, Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said circuit court.

40 Witness my hand and the seal of said court at Findlay this 9th day of April, A. D. 1903.

[SEAL.]

P. W. EWING, *Clerk*,
By W. P. ALSPACH, *Deputy*.

Circuit Court, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 966.

Motion for New Trial.

(Filed Jan. 15, 1903.)

Now comes the defendant, William Marvin, and moves the court to set aside and vacate the decision and judgment by it herein rendered, and to grant to this defendant a new trial of this cause, for the reasons and upon the grounds following, to-wit:

1. Because the said decision and judgment is contrary to the uncontroverted evidence in the case.

2. Because the said decision and judgment is contrary to law.

3. For error of law occurring during the trial of the cause, and at the time excepted to by this defendant, in this, among other things, to-wit: that the court erred in admitting testimony offered by
41 plaintiff to sustain her case against the exceptions of said defendant.

4. Because the said decision and judgment is not sustained by the evidence submitted by the plaintiff in the case.

5. Because the statute under, by authority and in pursuance of which the said plaintiff brought her case is unconstitutional and in contravention of the constitution of the State of Ohio.

6. Because the said action was at the time, and from the commencement thereof, barred by the statute of limitations.

WILLIAM MARVIN, *Defendant.*
PHELPS & DAVID,
J. A. & E. V. BOPE,
ALFRED GRABER,
His Attorneys.

42 In the Circuit Court of Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
against
WILLIAM MARVIN, Defendant. } No. 966.

Motion of Defendant to Make Finding of Facts More Definite and Certain.

(Filed Jan. 26, 1903, at 3:25 p. m.)

The defendant moves the court to make its finding of facts more definite and certain, and to correct the same in the following particulars, to-wit:

1. The preliminary statement requesting a finding of facts is not full enough to comply with the requirements of section 6710 of the statutes of Ohio as amended October 22nd, 1902, 96 Ohio Laws, Extraordinary Session, page 11.

2. The words "a jury being waived" should be stricken out to conform to the facts, as the court tried the case as an equity case in which neither side had a right to demand, nor to waive a jury, and a jury was neither demanded nor waived by either of the parties.

3. The finding number five (5) as to the words "had actual knowledge" and "knowingly permitted" are not facts but mere legl conclusions; whereas defendant asks that the facts that con-
43 stitute said alleged "actual knowledge" and said "knowingly permitted" be found by the court from the evidence, if any, so that it may appear whether or not said William Marvin was at any time present and saw said gambling, or whether he in fact ever gave any verbal or written permission for the same.

4. Defendant says said finding of facts as to his said alleged "actual knowledge" or that he "knowingly permitted" said gambling are not supported by the evidence.

J. A. & E. V. BOPE,
GEO. H. PHELPS,
ALFRED GRABER,
GEO. F. PENDLETON,
Attorneys for Defendant.

44 BELLE B. TROUT
vs.
WILLIAM MARVIN. } No. 966, Docket 2.

Bill of Exceptions.

Date of the overruling of decision, January 26, 1903.
Exceptions filed with clerk of trial court. February 25, 1903.
(Must be within forty days after the overruling or decision.)
Notice of filing to John Poe, attorney for plaintiff, February 25, 1903.
(By the clerk to adverse party or his attorney, forthwith after finding.)
Objections or amendments to the exceptions:
(Must be in ten days after the forty days.)
Transmitted to trial judge, March 19, 1903.
(Not less than twelve nor more than fifteen days after forty days from the overruling or decision.)

R. M. VOORHEES,
M. H. DONAHUE,
Trial Judges.

Received, March 23rd, 1903.
(Corrected) and allowed this 23rd day of March, 1903.

R. M. VOORHEES,
M. H. DONAHUE,
Trial Judges.

45 Transmitted back to clerk, March 23rd, 1903.

R. M. VOORHEES,
M. H. DONAHUE,
Trial Judges.

Received again by clerk, March 25th, 1903.
Filed in Hancock circuit court, February 25th, 1903.

P. W. EWING, *Clerk*,
By W. P. ALSPACH, *Deputy*.

46 In the Circuit Court, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 966.

Appearances.

For plaintiff, John Poe.
For defendant, J. A. & E. V. Bope, George H. Phelps, Alfred Graber.

Bill of Exceptions.

(Filed April 27, 1903.)

It was stipulated and agreed by the parties, in open court, that this cause and cause No. 965 between the same parties should, for convenience, be tried together, and that all evidence competent in either should be received generally in the trial, and that both parties waived all objections to the admission of any evidence in the record in this case which is competent in either of the cases, and the court accordingly so heard and tried the two cases together.

Be it remembered, that upon the trial of said cause, before
47 the Hon. S. M. Douglass, Hon. R. M. Voorhees, and Hon. H. M. Donahue, at the December term, A. D. 1902, of the circuit court, within and for the county of Hancock, and State of Ohio, the said defendant by his counsel made the following admission:

For the purpose of this action it is admitted that between the 19th day of March, 1893, and the 20th of June, 1894, the premises described in the petition were used for gambling purposes by Clifford and Gassman, that they are the same premises in which the money described in judgment or represented by the judgments set up in the petition, are claimed to have been lost, but not admitting that plaintiff's husband, in fact, gambled with Clifford and Gassman between March 19th, 1893, and June 20th, 1894, it is admitted, for the purposes of this action, that if he did, such gambling was

done in the building and upon the premises of the defendant described in the petition.

It is also conceded that the judgment was rendered against Clifford and Gassman.

It is further admitted that Clifford and Gassman occupied no other premises and conducted no gambling during the periods specified in the petition except the premises referred to in the petition, referred to as lot No. 86.

Thereupon B. F. WOLFF was called as a witness on behalf of plaintiff, who being duly sworn, testified as follows:

48 Direct examination.

By Mr. POE:

Q. Mr. Wolff, you reside in Findlay?
A. Yes, sir.
Q. How long have you lived in Findlay?
A. About twelve years.
Q. What is your business?
A. Grocery business.
Q. A retail grocer?
A. Yes, sir.
Q. In North Findlay?
A. Yes, sir.
Q. Where is your store now with reference to Mr. Marvin's residence?
A. Why, my store is at the corner of Main and Center at present.
Q. Tell the court whether at one time you had your grocery store in Mr. Marvin's Opera House building?
A. Yes, sir; I have been in the opera house building about four years.
Q. During what time, tell the court?
A. Why, I came to Findlay in 1891; I was in the store about one year before Mr. Marvin built the opera house and Mr. Marvin wanted me to occupy after that room was done, the opera house room, the three floors.
Q. So you did that?
A. Yes, sir.
Q. Now, tell the court whether Mr. Marvin came into your store and sat and visited often times during that period you were in the building?
A. When I first came to Findlay, Mr. Marvin was not at home, he was, I believe, at California.
49 Q. In 1891?
A. Yes, sir. In the spring of 1891, March, I believe, Mr. Marvin came back from California, and after that I got acquainted with Mr. Marvin and he has been in the store very frequently.

Q. And tell the court whether during 1893 or the fore part of 1894, say 1893, you had any talk with him with reference to this Clifford and Gassman place?

A. Why, Mr. Marvin was in the store at one time, one evening, sitting around there——

Q. That is about how long after you went there, you say? That was in 1893, I understand you?

A. I think it was during that time.

Q. Now tell the court about the conversation?

A. Well, Mr. Marvin told me—he spoke of his property, he claimed the property was up town and was one of his best paying properties.

Q. Which one did he refer to?

A. This Marvin block.

Q. Did he speak of who was occupying it?

A. There were several occupying it, several occupying the rooms. There was a saloon and gambling house owned and controlled by Clifford and Gassman——

(Objected to by counsel on behalf of defendant.)

Q. What was said?

A. He said those rooms were occupied by a saloon and also used for gambling.

Q. Did he say who occupied them?

A. Mr. Clifford and Mr. Gassman.

Q. What, if anything, did he say about where the saloon and gambling rooms were located in the building?

50 A. I don't know as we came that far in the conversation, that he described the rooms to me.

Q. Now let me ask you whether you had that conversation—Mr. Trout passed the window or you saw him there?

A. Mr. Trout came in my store at that time when we were together, he got a cigar.

Q. When he went out, what, if any talk, did you and Marvin have?

A. When Mr. Trout left, I told Mr. Marvin I heard Mr. Trout was the party who gambled. Mr. Marvin said, "Yes, Frank plays pretty heavy."

Q. And what, if anything, did he say to you as to what he got out of these rooms up there?

A. Why, to the best of my knowledge that I remember now, Mr. Marvin said that he was getting a rake off; I don't know what it meant, but that was the remark.

Q. Was that in the same conversation in which he was talking about the saloon and gambling up there?

A. It was after, at the same time.

Q. I want to ask you what, if anything, Mr. Marvin said to you about where Frank was gambling?

(Objected to by counsel on behalf of defendant.)

Q. What further was said about that gambling business?
A. Why, Frank was gambling in his block.

Cross examination.

By Mr. PHELPS:

Q. Did he say that?
A. Yes, sir.
Q. Now, you had a law suit with Uncle Billy before you got through, did you?
A. Yes, sir.
51 Q. And you don't feel very friendly with him?
A. Just as friendly as ever, with Mr. Marvin, yes, sir.
Q. Now, who did you first tell of the fact that you had any such conversations with Mr. Marvin; who did you tell it to after it happened?
A. I don't know as I told anybody outside of Mr. Poe.
Q. How did you happen to tell Mr. Poe?
A. Mr. Poe came and asked me about his affairs.
Q. Whose affairs?
A. This gambling affair.
Q. Mr. Poe did?
A. Yes, sir.
Q. And you told him about this conversation?
A. Yes, he asked me some questions and I answered him, yes, sir.
Q. Where were you when you had this talk with Poe?
A. Up at my store.
Q. Poe came over there?
A. He was over there, yes, sir.
Q. Up to that time you hadn't told anybody about it?
A. No, sir.
Q. Not a soul?
A. No, sir.
Q. You had no interest in it?
A. Not especially, no, sir.
Q. Did you send word to Poe to come to see you?
A. No, sir.
Q. Do you know anything about the fact how Poe got onto the fact you knew so much about this?
A. No, sir, I don't know.

52 Re-direct examination.

By Mr. POE:

Q. You were asked about having a law suit with Mr. Marvin, let me ask you who it was, the real trouble there was with, whether it was Mr. Marvin or Willis?

(Objected to by counsel on behalf of defendant; objection sustained, to which ruling of the court plaintiff then and there excepted.)

Thereupon H. F. RAMSEY was introduced as a witness on behalf of plaintiff, who, being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Ramsey, where do you live?
A. In Findlay.
Q. What is your business?
A. I am a contractor.
Q. Tell the court whether you were chief of police here two years?
A. I was, yes, sir.
Q. Under Mayor Watson?
A. Yes, sir.
Q. How long ago was that?
A. From April, 1900, to April, 1902.
Q. Do you know Mr. Marvin, William Marvin?
A. Yes, sir.
Q. I want to ask you if about the middle of May last you met Mr. Marvin?
A. Yes, sir.
53 Q. Where did you meet him?
A. In Kenton.
Q. Hardin county?
A. Yes, sir.
Q. Did you have a talk with him there?
A. Yes, sir.
Q. Tell the court whether or not you came home on the same train with Mr. Marvin?
A. We did.
Q. Did you have some talk with him on the train?
A. Yes, sir.
Q. Tell the court what talk you had?
A. Well, Mr. Marvin and I were talking first about his property in North Carolina.
Q. In North Carolina?
A. Yes, sir; and he asked me if I lived in Findlay. I told him I did, and I told him who I was. He said, "You are the man, then, that Con Riley came to and talked about the Trout case, aren't you?" I said, "Yes, sir." He said, "They will have a good time proving I knew they were gambling there." I said to him, "Is that what they are trying to prove?" He said, "Yes, that is what they are trying to prove, but they will have a hard time trying to prove that." He

said, "Did you ever see me in that gambling room? I said, "No, sir, nor you didn't see me there." I said, "I don't frequent such places." I said, "You knew what you rented the property for, didn't you?" He said, "I can know a good many things without seeing them."

Q. What if anything, was said as to what the rooms were used for, and what he knew about it?

(Objected to by counsel on behalf of defendant.)

54 A. He didn't say.

Thereupon counsel on behalf of plaintiff offered in evidence the testimony of Mr. Heller, given in the former case in the common pleas court and transcribed for this case, marked Exhibit "No. 1." Counsel on behalf of defendant objected to so much of the evidence of Mr. Heller as relates to the premises as a gambling house; objection overruled, to which ruling of the court defendant then and there excepted.

Thereupon the evidence of Mr. Heller was read to the court, a copy of which is in the words and figures following, to-wit:

"Thereupon Mr. HELLER was introduced as a witness on behalf of the plaintiff, who, being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Heller, you reside in Napoleon, I believe?
A. Yes, sir.
Q. You are an uncle of Mr. Frank H. Trout?
A. Yes, sir.
Q. Are you the Heller that used to be in the legislature from Ohio?
A. Yes, sir.
Q. What is your business?
A. Manufacturer.
Q. Of what?
A. Wind mills, pumps, tanks, other machinery.
55 Q. State whether in your business you, during 1893 and 1894, sometimes visited Findlay?
A. Yes, sir.
Q. Tell the court about what times in 1893 you visited Findlay?
A. In April, June and September that I remember of.
Q. You were attending county fair in Se-tember, I believe?
A. Yes, sir.
Q. Tell the court whether or not in your mingling with the citizens in Findlay and people who came to Findlay, you had the means of knowing the reputation of this Clifford-Gassman place, as to its being a gambling place?

A. To some extent.
Q. During 1893 and 1894?
A. To some extent.
Q. Tell the court what the reputation of the place was during those years?
A. It had the reputation away from home—I knew it more away from home than I did here in Findlay.
Q. Of what?
A. Of being a gambling place where they played pretty hard.

(Counsel on behalf of the defendant objected to the witness testifying as to the reputation away from home; which objection the court sustained.)

Q. Mr. Heller, with reference to your association with the people in Findlay and knowing what the reputation was in Findlay of this place?
A. Yes, it had the reputation here as a gambling house.
Q. Now tell the court, Mr. Heller, whether or not you saw
56 Mr. Trout in this gambling place at any time in 1893 or 1894?
A. I seen him in a room above Mr. Clifford's and Gassman's café and saloon in the back part, a room up on the second floor at the rear of the building, in April and in June and in September.
Q. Of 1893?
A. Of 1893.
Q. And you may tell the court what was going on there, what was being conducted there, if you know?
A. Well, they were playing poker and sometimes playing "bank" as they called it.
Q. Faro bank?
A. I think.
Q. What is poker and what is faro bank; if you can, tell the court so he will understand it?
A. Well, I don't know; it is a game of chance played with cards; in poker, sometimes the best hand wins and sometimes it doesn't.
Q. And now, this bank—this wasn't the national bank—what kind of a bank is it?
A. I don't know; never played it; can't understand it; it is a game of chance, of course; they put the money on the table and I have stood by and saw them play it. I don't understand it well enough to play it. If a card they put their money on, wins, of course, the man dealing had to put up the same amount—I don't understand the game of faro.
Q. It is a game of chance?
A. It is a game of chance, certainly, that I think the bank has got the better of.
Q. So the chances seem to turn their way?
A. Yes, sir.

57 Q. Tell the court whether during 1893, these three times you speak of, you saw Frank Trout in there engaged in these games.

(Objected to by counsel on behalf of defendant; objection overruled, to which ruling of the court defendant then and there excepted.)

A. I seen him playing poker; I don't think I saw him playing bank in April; he only played bank once that I was in the room. That was—I don't remember whether that was in June or September, I seen him get up from the poker table. He had been losing; he made the remark he would try bank awhile.

Q. At all of the three times you were there, tell the court whether Mr. Trout lost money to these people in this place?

A. Invariably lost, yes, sir, when I was with him.

Q. And when you saw him lose, it was in this room in the Clifford and Gassman building?

A. Yes, sir.

Q. Did you know who owned that building at the time?

A. No, sir; I knew who was running the room there; I didn't know who owned the building proper.

Q. Who was running the room?

A. Clifford and Gassman; that is, they didn't run it all the time; they were not up there all the time; Mr. Gassman was seldom up there. Mr. Clifford was out very often; a man by the name of Knisel—he was in their employ and he very often would issue the chips and Mr. Knisel would very often attend to that part of
58 the duty; when they would go broke, they would buy more chips, and Mr. Clifford also done the same.

Cross examination.

By Mr. PHELPS:

Q. About how many times were you up there, Mr. Heller, during this year, 1893?

A. I think I was here about three times in April and three or four times in June and four times in September.

Q. Was you up there every time you were here?

A. I was there every night and one afternoon in September; Mr. Trout was in with me that afternoon.

Q. What was you doing?

A. I was playing poker.

Q. How did you get in there?

A. I went into the saloon and would go to Mr. Clifford, if he was down there, and if not, to some other one that I spoke of, and they would take me up the back stairway; that is, the one leading up from the saloon.

Q. Have you unlocked the door?

A. Yes, sir.

Q. These rooms were kept locked?

A. No, the door leading up in the inside, I don't think was locked, but the door leading from the hallway into the room I think was locked.

Q. If the door wasn't locked, why did you have to have someone go up with you?

A. No, they wouldn't always go up with me, but sometimes; when I first went up, Mr. Clifford took me up, because I didn't know the way up into the room, the back way.

59 Q. Now, Mr. Heller, were you pretty well acquainted in Findlay at that time?

A. Well, I have been acquainted with the older inhabitants for the last forty years; used to live in this county; grown up in this county.

Q. Are you able to say that in 1893 and 1894, this place had the reputation of being a gambling place except among those that frequented it and played there?

A. Yes, I have heard people speak of it that never visited it.

Q. Can you tell of anyone that spoke of it that never visited it?

A. Yes, not in Findlay.

Q. Who was that?

A. In my place?

Q. I mean here.

A. I don't know I could here.

Q. Now, you have testified before the court that this place at that time had the reputation of being a very large gambling house?

A. They played pretty high.

Q. That reputation so far as you know was confined to the habitues of that place, people who were in the habit of going there and gambling high?

A. I rather think so; I think I heard more talk coming from that source than from any outside source.

Q. Now, there was an air of secrecy about these performances there; the doors were kept locked?

A. No, I don't understand there was any secret, only there was certain parties they didn't want in there; they were excluded.

60 Q. The doors were kept locked against the outside so that no one came in their place unless they were acquainted with that avenue?

A. The doors leading in from the hallway; that is from Main Street hallway, I think, generally was kept locked, because I have been here when someone came for the key and they would open it, and friends would come up and rap and someone would open the door.

Q. It is not a public gambling place where the public came in and out at their pleasure; it is not that kind of a place?

A. I think it was a place that anybody would enter that wanted to gamble.

Re-direct examination.

By Mr. POE:

Q. Do you know how many entries they did have to it?
A. I never went in only from the place or end from the hall and the one from the inside; I understood there was another entry from the alley in the rear; I never went in that way.

Thereupon counsel on behalf of plaintiff offered in evidence the deposition of J. L. Powell, marked Exhibit "No. 2," which was read in evidence, a copy of which is in the words and figures following, to-wit:

"Depositions of sundry witnesses, taken before me, a notary public of the county of Hancock, State of Ohio, in a cause pending in the common pleas court of Hancock county, State of Ohio, wherein Belle B. Trout is plaintiff and William Marvin is defendant, pursuant to the annexed notice, and at the time and place therein
61 mentioned, to be read as evidence in behalf of the plaintiff on the trial of the aforesaid cause.

Present: John Poe, on behalf of plaintiff, and George H. Phelps and Alfred Graber on behalf of defendant.

Deposition J. L. Powell.

J. L. POWELL, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows, after statements of counsel:

Mr. Phelps objects to the taking of this deposition at this time and asks to have the taking deferred until Thursday of this week on account of the necessary absence of the defendant Marvin at the burial of his sister at Auburn, Indiana, which occurs this 28th day of August, 1900.

Mr. Poe, for plaintiff, declines to postpone the taking until Thursday for the reason only that the witness whose deposition is to be taken cannot be here at that time and if he goes it would necessitate traveling for about 900 miles to secure the deposition.

Direct examination.

By Mr. POE:

1 Q. State your name, age, place of residence and occupation?
A. J. L. Powell, age 39, residence Grand Rapids, Minnesota, at present; occupation, bookkeeper for a lumber company.
2 Q. Are you acquainted with the parties to this suit, Belle B. Trout and William Marvin?

62 A. I am.

3 Q. How long have you known them?

A. I do not claim any personal acquaintance until after I came to Findlay here to do business.

4 Q. State whether or not at any time you were associated with the defendant in business, and if so, state when and what business, and where?

A. I was during the period beginning the 12th of January, 1897, and continuing about thirteen months; I would not give the exact date, but that was within a few days of it. We dealt in feed and fuel in what is known as the Marvin Opera House block, in Findlay, Ohio.

5 Q. How were you associated in business for that time with the defendant?

A. How? You mean what we were engaged in?

6 Q. Whether you were partners or a corporation?

A. Well, we were in partnership in this sense; Mr. Marvin furnished the money and we divided the profits. There is a contract in existence somewhere.

7 Q. How far, during that time, was your business place from Mr. Marvin's residence about?

A. He resided in the block, in the opera house block.

8 Q. State whether or not the defendant was in your place of business much of the time during that period?

A. Well, he called in quite frequently, would come in and sit down and talk quite often.

9 Q. State whether or not during that period you had any talk with the defendant in which he spoke of any trouble that he had, or law suit, with Mrs. Trout, the plaintiff, or with Frank Trout, her husband, and if so about when it occurred and what he said?

63 A. Yes, he told me he had had trouble with Trout.

10 Q. About when did he tell you?

A. Well, it was during the period while I was in business there, some time during the first part of our partnership deal, the first year at least.

11 Q. What did he say?

A. There was quite a bit said. He told me he had had trouble with Mr. Trout in regard to a suit then pending in court that originated from gambling. He told me the trouble between them was that he was backing Trout up, that Trout used to be in his room there doing business, and Trout got to gambling there in the Clifford and Gassman room, and he told me he used to back Trout and he found out that Trout was gambling and he refused to back him any longer and then Trout turned around and sued him for money he had lost while gambling in Clifford and Gassman's room in his building. I don't know that he ever told me they had any other trouble, about anything else.

12 Q. What if anything did he say as to whether he knew that Frank Trout in his gambling in that room was a loser or not?

(Objected to by counsel on behalf of defendant Marvin; objection overruled in so far as it tends to show he had knowledge, to which ruling of the court defendant then and there excepted.)

A. Yes, he told me he knew Trout was losing; that he
64 knew he neglected his business and was gambling, that sometimes he would gamble all night; he told me that.

13 Q. What if anything did he say as to his knowing that Mr. Trout had to be sent for up at that gambling place?

(Objected to by counsel on behalf of defendant; objection overruled, to which ruling of the court defendant then and there excepted.)

A. He told me that he was gambling up there and that sometimes when people came to see him they would have to send for him up here at Clifford's and Gassman's; that he would be up here gambling and they would have to send for him.

14 Q. What if anything did Mr. Marvin say to you as to where Trout's business place was at the time he was doing this gambling he spoke of?

(Objected to by counsel on behalf of defendant Marvin; objection overruled, to which ruling of the court defendants then and there excepted.)

A. He told me he was gambling during the period Mr. Marvin was backing him in business, or otherwise loaning him some money.

15 Q. I mean where Frank was doing business?

A. He was doing business there in his block.

16 Q. That is in the Marvin Opera House block?

A. Yes, sir.

Cross-examination.

By Mr. PHELPS:

17 Q. This talk, whatever it was, occurred during the first
65 year that you and Marvin were partners?

A. Yes, sir.

18 Q. And that was sometime in the year 1897?

A. Yes, sir.

19 Q. Now, you had some trouble with Marvin, didn't you?

A. Not during that period. No.

20 Q. Growing out of your partnership affairs?

A. Not at that time.

21 Q. I say since then?

A. Yes, sir.

22 Q. He was to furnish the money in your business, you to do the business, and divide the profits?

A. Yes, sir.

23 Q. That was your contract?
A. Yes, sir.
24 Q. And he did furnish the money, did he?
A. Yes, sir.
25 Q. And you did the business?
A. Yes, sir.
26 Q. And you were in partnership about how long?
A. I cannot give you the exact date, about thirteen months as near as I can tell.
27 Q. And at the end of thirteen months you settled up, didn't you?
A. Well, we quit business.
28 Q. And you gave him your note for about $1,500.00 for your share of the losses?
A. No, I didn't.
29 Q. Didn't you give him a note?
A. Yes, but not for that amount; I don't remember the exact amount.
30 Q. Can't you tell within a thousand dollars?
66 A. If I remember it was eleven hundred and something.
31 Q. And that represented your share of the losses?
A. No, it represented it his way of figuring and I just gave it to get peace with him.
32 Q. You understood at the time you gave him the note that that was your share of the loss in the business?
A. Yes, sir.
33 Q. And he claimed more than that?
A. Yes, he claimed various amounts. He told me if I would give him my note for that amount he would square the books and we would drop it.
34 Q. And you did that with Mr. Marvin?
A. Yes, sir, up to that time.
35 Q. During the first year of your business he talked with you frequently, did he?
A. Yes, sir.
36 Q. And he told you what Trout was doing over there?
A. Yes, sir.

Thereupon counsel on behalf of plaintiff offered in evidence in case No. 10,796, the petition and answer of Clifford and Gassman and William Marvin, also the reply of plaintiff Trout, and the journal entries and judgments.

(Objected to by counsel on behalf of defendant Marvin; objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon the above papers in case No. 10,796, being the petition, and answer of Clifford and Gassman and William Marvin,
67 also the reply of plaintiff Trout, and journal entries and judgments, were put in evidence, marked Exhibits 3, 4, 5, and 6, copies of which are in the words and figures following, towit:

EXHIBIT 3.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

" BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. }

Petition.

The plaintiff says the defendant, William Marvin, is, and for many years last past has been the owner of the following real estate situate in the county of Hancock and State of Ohio, and being lot number eighty-six (86) in the city of Findlay, with the buildings thereon.

She says that for many years last past, including the period between March 20th, 1893, and March 19th, 1894, the defendants have been engaged in carrying on the business of gambling in certain rooms in said building on said lot No. eighty-six (86).

Between the 20th of March, 1893, and the 19th day of March, 1894, the defendants won of Frank H. Trout, who is hus-
68 band of plaintiff, at gambling in said rooms in said buildings on said lot, the sum of eight thousand dollars, and which sum said Frank H. Trout then and there paid to defendants as such winnings as aforesaid.

Said Frank H. Trout, without collusion or deceit, failed within six months from the dates of such losses and payments by him to the defendants, to sue or prosecute with effect or at all, for money so lost and paid, whereby a cause of action has accrued to this plaintiff for said sum of eight thousand dollars under chapter five of the Revised Statutes of the State of Ohio.

By reason of the facts aforesaid, there is due to plaintiff from the defendants the sum of eight thousand dollars.

Wherefore plaintiff asks judgment against said defendants James Clifford, Jacob Gassman and William Marvin, in said sum of eight thousand dollars.

JOHN POE,
Att'y for Plaintiff."

69 EXHIBIT 4.

Court of Common Pleas, Hancock County, O.

"BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 10796.

Answer of James Clifford, Jacob Gassman, and William Marvin.

Now come the said James Clifford and Jacob Gassman and William Marvin, and for their answer to the petition of the plaintiff, Belle B. Trout, say:

They admit that the defendant William Marvin is the owner of the premises in the petition described, that Frank H. Trout is the husband of the plaintiff, and they deny each and every, all and singular the other allegation of the petition.

And the said defendants further answering say: That between the 20th day of March, 1893, and the 9th day of July, 1894, there were some gambling transactions between said Frank H. Trout, and the defendants, James Clifford and Jacob Gassman, but in which transactions the defendant, William Marvin, had nothing to do, no interest therein, and no knowledge thereof.

That said Frank H. Trout had for many years been in the
70 habit of gambling, and thereby winning and losing small sums of money, of which the plaintiff had full knowledge and notice.

That in said transaction the said Frank H. Trout had won and lost about equal sums of money, and about the time within the time alleged in the petition, the defendants, James Clifford and Jacob Gassman, obtained and held a check given them by said Frank H. Trout on the Farmers' national bank, for $245.00, and said Frank H. Trout owed them cash $50.00.

That within said time the said James Clifford endorsed and presented said check to the Farmers' national bank, of Findlay, Ohio, on which it was drawn, and demanded payment thereof, which was refused. And said check was thereafter held by the said defendants, James Clifford and Jacob Gassman, until afterwards about the 8th day of July, 1894, the plaintiff herein and the said Frank H. Trout were complaining against said defendants, James Clifford and Jacob Gassman, on account of said transaction and attempted to compromise the same with said defendants, and that on or about the 9th day of July, 1894, before suit had been commenced by plaintiff, or any one else, and the said Frank H. Trout, having then the right in himself to bring said action, and with the knowledge and consent of said plaintiff, said Frank H.

Trout proposed to said defendants, James Clifford and Jacob Gassman, that if they would return to him said $50, so as aforesaid lost in money, and surrender to him the said
71 check of $245 and cancel the same, that he would settle and compromise all claims against said defendants James Clifford and Jacob Gassman, growing out of said gambling transaction. And that the said defendants James Clifford and Jacob Gassman in good faith and without collusion on their part and as they understood and believed in good faith and without collusion on the part of said Frank H. Trout, accepted said offer, and returned to said Frank H. Trout, said $50 cash and then and there cancelled and surrendered said check of $245, and that the said Frank H. Trout then received and accepted said cash and cancellation of said check, in full settlement of all claims arising from said gambling transactions and which sums more than paid all the losings of said Frank H. Trout to these defendants and thereby all claims against said defendants, James Clifford and Jacob Gassman, were settled, compromised and liquidated in good faith and thereby the said plaintiff became and is barred of all right of action against said defendants growing out of said gaming transaction.

Wherefore said defendants deny that there is anything due to said plaintiff from said defendants or either of them under the pretended cause of action in said petition set forth.

E. T. DUNN,
J. A. & E. V. BOPE,
ALF. GRABER,
Att'ys for Defendants."

72 EXHIBIT 5.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

"BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. }

Reply.

Now comes the plaintiff Belle B. Trout and for reply to the answer of the defendants herein filed, says:

1st. She denies that said William Marvin, defendant, had nothing to do with the gaming transactions in her petition mentioned and referred to; denies that said William Marvin had no interest therein; denies that said Marvin had no knowledge thereof.

She denies that in said gaming transactions between said Frank H. Trout and the defendants, said Trout had won and lost equal sums of money, but she says during the period in the petition set forth, to-wit: from March 20th, 1893, to March 20th, 1894, at gaming in at said place with the defendants, said Frank H. Trout's losses exceeded his winnings eight thousand dollars.

She denies that she or said Frank H. Trout ever settled her claim in the petition set forth or any part thereof, for $50 and the surrender of a $245 check or for either or at all.

73 She denies that defendants or any of them paid said Frank H. Trout or plaintiff any money or cancelled or delivered to her or her said husband any check in settlement of said claim in her petition set forth, or any part thereof, or at all.

She denies that she or said Frank H. Trout ever received from defendants or any of them any cash or check in settlement of said claim or any part thereof or at all.

Denies that she is barred at all of her right of a claim.

Denies that the losses of said Frank H. Trout did not exceed $295.

She says at one time she learned that her husband had given a check on the Farmers' national bank to the defendants for $245, to pay losses at gaming with them, and she procured said bank to refuse to pay the same. She says that occurred about April 10th, 1894, and constituted no part of the losses within the period covered by her petition.

She therefore prays as in her petition she hath prayed.

JOHN POE,
Att'y for the Plaintiff.

Thereupon counsel on behalf of plaintiff put in evidence the record containing journal entries in case No. 10,796, recorded in Journal 30, pages 448 and 603, and Journal 31, pages 1, 3, 16, 126, 170 and 537.

Counsel on behalf of defendant Marvin stated that it is conceded that this judgment is in form against Marvin as well as

74 Clifford and Gassman. It is conceded that the circuit court reversed the judgment of the common pleas and afterwards the defendant Marvin was dismissed and dropped out of the case.

(Defendant objected to the offering of the above journal entries on the ground that they were not competent as against William Marvin; objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon the above journal entries in case No. 10796 were read in evidence, copies of which are in the words and figures following, to-wit, and are marked Exhibit "No. 7":

EXHIBIT 7.

In the Court of Common Pleas.

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD ET AL., Defendants.

Certified Copy of Journal Entry.

Pleas before the Hon. C. M. Melhorn, one of the judges of the court of common pleas within and for the first subdivision of the tenth judicial district of Ohio, at the March term, A. D. 1895, of said court began and held at the court house in Findlay, within and for the county of Hancock and State of Ohio.

75 Be it remembered that at the January term, 1895, to-wit, January 17th, 1895, the following entry was made upon the journal of said court, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD ET AL., Defendants. (30–448. No. 10796.)

On motion and application of the defendants this cause is continued to the next term of this court, and at the costs of said defendants. It is therefore considered that the defendants pay the costs of this continuance for which execution is awarded.

"And afterwards to-wit, at the March term, 1895, to-wit, March 19th, 1895, the following order was made upon the journal of said court to-wit:"

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. (30–603. No. 10796.)

This day came the parties with their attorneys, also came the following named persons as jurors, to-wit: Jacob Kempher, George W. Robinson, Joseph Crites, Frank L. Fenstermaker, Smith H. Hoy, Cyrus Dillinger, George Wisely, John Beagle, S. C. Groves, Robert Bonham, Michael Palmer and William Edwards, who were fully impaneled and sworn according to law and this cause came
76 on and was heard upon the pleadings and evidence and the jury having heard the evidence in part and the hour of adjournment having arrived, court adjourned until tomorrow morning at 8:30 o'clock.

And afterwards to-wit at the March term, 1895, to-wit, March 20th, 1895, the following entry was made upon the journal of said court to-wit:

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } (31–1. No. 10796.)

This day again came the said parties with their attorneys and also came the jury hereinbefore impaneled and sworn in this case and the trial proceeded and the said jury having heard the remainder of the evidence, arguments of counsel and charge of the court, retired to their rooms in charge of the sheriff for deliberation and the hour of adjournment having arrived the court excused the jury until to-morrow morning at 8:30 o'clock.

"And afterwards to-wit at the March term, A. D. 1895, to-wit March 21st, 1895, the following entry was made upon the journal of said court, to-wit:"

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } (31–3. No. 10796.)

This day again came the parties with their attorneys, also
77 came the jury heretofore impaneled and sworn in this case, and the jury again retired to their room for further deliberation. And now comes said jury into open court with their verdict in writing signed by their foreman, and say:

"We, the jury, being duly impaneled and sworn find the issues in this case in favor of the plaintiff and assess the amount due to the plaintiff from the defendants at the sum of $3,473.00, thirty-four hundred and seventy-three dollars.

M. C. PALMER, *Foreman.*"

"And afterwards at the March term 1895, to-wit May 2nd, 1895, the following entry was made upon the journal of said court to-wit:

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and William Marvin, Defendants. } (31–126. No. 10796.)

This day again came the said parties with their attorneys and thereupon this cause came on and was heard upon the motions of said defendants, James Clifford, Jacob Gassman and William Marvin to set aside the verdict hereinbefore rendered in this case and to

grant a new trial herein and was argued by counsel. Upon consideration whereof it is ordered that said motions and each of them be and they hereby are overruled and refused. To which order overruling said motions for a new trial the defendants at
78 the time excepted and here now except, and thereupon plaintiff moved for judgment upon the verdict, which motion is granted by the court. It is therefore adjudged that the said plaintiff, Belle B. Trout, recover from the defendants, James Clifford, Jacob Gassman and William Marvin the said sum of three thousand four hundred and seventy-three dollars ($3,473) aforesaid, and also her costs herein taxed at $—. And it is further ordered that the said defendants pay the costs by them made in this action to be taxed and in default thereof that an execution issue therefor. To all of which the defendants at the time excepted and here now except, and the court ordered the docket in this case left open 50 days for the defendants to prepare and have signed a bill of exceptions herein.

"And afterwards on this 23rd day of May, 1895, the following order was made upon the journal of said court, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and William Marvin, Defendants. } (31–170. No. 10796.)

Now on this 23rd day of May, A. D. 1895, came the said defendants, James Clifford, Jacob Gassman and William Marvin and the said William Marvin for himself and in his own behalf with their attorneys and presented to the court their certain bill of ex-
79 ceptions herein, which being found by the court to be true, is allowed and signed and sealed and on motion is hereby made part of the record in this case but not spread at large upon the journal.

LOUIS P. JULIEN."

JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Plaintiffs in Error,
vs.
BELLE B. TROUT, Defendant in Error.

This cause at a former day of this term came on for hearing upon the petition in error, the transcript and original papers and pleadings from the court of common pleas of Hancock county, and was argued by counsel. On consideration the court on this 14th day of December, 1895, find that as to the plaintiffs in error, James Clifford, Jacob Gassman, there is no error apparent upon the record in said proceedings and judgment. The court further find that as to the plaintiff in error, William Marvin, there is error apparent upon the

record to the prejudice of said plaintiff in error, William Marvin, in this, to-wit: First, that as to said William Marvin the evidence is not sufficient to sustain the allegations of the petition and the verdict as to him is not sustained by sufficient evidence. It is therefore considered by the court that the judgment aforesaid as to the said
80 James Clifford and Jacob Gassman be, and the same hereby is affirmed and that the defendant in error recover from the said James Clifford and Jacob Gassman her costs herein expended taxed at $—. It is further considered by the court that the judgment aforesaid as to the plaintiff in error, William Marvin, be, and the same hereby is, reversed, the motion for a new trial is granted, the verdict set aside and a new trial ordered. And as to the said William Marvin, this case is remanded to the court of common pleas for a new trial, and that a special mandate be sent to the said court to carry this judgment into execution and as to said judgment against the said James Clifford and Jacob Gassman so by the court affirmed, it is ordered that a special mandate be sent to the common pleas court of Hancock county for execution upon said judgment. To all of which the plaintiffs in error James Clifford and Jacob Gassman, duly excepted and here now except.

I, Louis P. Julien, clerk of the circuit court of Hancock county, Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said circuit court.

Witness my hand and the seal thereof at Findlay, this 25th day of January, A. D. 1895.

[SEAL.] LOUIS P. JULIEN, *Clerk*,
By PRESLEY E. HAY, *Deputy*.

Counsel on behalf of defendant, William Marvin, admitted
81 in open court that the signatures to the answer of Clifford and Gassman and the signature of Marvin to the answer are the genuine signatures of these persons.

Thereupon counsel on behalf of plaintiff offered in evidence the papers in case number 11138, consisting of a petition, answer and separate answer of William Marvin, which papers were put in evidence, marked Exhibits 8, 9, 10, 11, copies of which are in the words and figures following, to-wit:

EXHIBIT N. 8.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

"BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants.

Petition.

The plaintiff says that William Marvin is, and for many years last past has been the owner of the following real estate situate in the county of Hancock, and State of Ohio, and being lot number eighty-six (86), in the city of Findlay, with the buildings thereon.

She says that for many years last past, including the period between March 19th, 1894, and June 19th, 1894, the defendants
82 have been engaged in carrying on the business of gaming in certain rooms in said building on said lot No. 86.

Between the 19th day of March, 1894, and the 19th day of June, 1894, the defendants won of Frank H. Trout, who is husband of plaintiff, at gaming in said rooms in said building on said lot, the sum of twenty-two hundred dollars, and which sum said Frank H. Trout then and there paid to defendants as such winnings as aforesaid.

Said Frank H. Trout, without collusion or deceit, failed within six months from the dates of such losses and payments, by him to the defendants, to sue or prosecute with effect or at all for the money so lost and paid, whereby a cause of action has accrued to this plaintiff for said sum of twenty-two hundred dollars under chapter five, title five, of the Revised Statutes of the State of Ohio.

By reason of the facts aforesaid, there is due to plaintiff from the defendants the sum of twenty-two hundred dollars.

Wherefore plaintiff asks judgment against said defendants, James Clifford, Jacob Gassman and William Marvin, in said sum of twenty-two hundred dollars.

JOHN POE,
Attorney for Plaintiff."

83 EXHIBIT 9.

Court of Common Pleas, Hancock County, Ohio.

"BELLE B. TROUT
vs.
JAMES CLIFFORD ET AL.

Separate Answer of William Marvin.

And now comes William Marvin, one of the defendants, and for his answer to the petition of the plaintiff, admits that he is the owner of the premises described in the petition and further as to said petition, this answering defendant denies the same and each and every allegation thereof.

J. A. & E. V. BOPE,
GEORGE H. PHELPS,
ALFRED GRABER,
E. T. DUNN,
Attorneys for William Marvin.

84 EXHIBIT 10.

Court of Common Pleas, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 11138.

Separate Answer of James Clifford and Jacob Gassman.

Now comes the defendants, James Clifford and Jacob Gassman, and for their answer to the petition of the plaintiff, Belle B. Trout, say:

That they admit that William Marvin is the owner of the property in the petition described; that the plaintiff is the wife of Frank H. Trout; that said Frank H. Trout has not prosecuted with effect or at all, any claim against these defendants during the time mentioned in the petition.

They deny each and every, all and singular the allegations of said petition.

JAMES CLIFFORD AND
JACOB GASSMAN,
By BOPE AND DUNN ET AL., *Attorneys.*

85 EXHIBIT 11.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, and WILLIAM MARVIN, Defendants. } No. 11138.

Amendment to Petition.

Now comes the plaintiff, Belle B. Trout, and leave of the court first had and obtained, amends her petition herein by adding thereto the averments following, to-wit:

She says if the said William Marvin did not, in person, engage in said gaming transactions in her petition herein set forth, and in which her husband lost said money as in her petition set forth, said William Marvin is jointly liable therefor with said other defendants herein, for she says said Marvin so owning said lot and building and room in which said gambling was done, knowingly permitted the same to be occupied and used by said other defendants for gaming and lottery purposes for many years prior thereto, and during the period set forth in her petition herein, within which her said husband so lost to defendants said sum of twenty-two
86 hundred dollars, and failed immediately or at all to prosecute in good faith, or at all, any action or proceeding for the recovery of the said premises, or to prevent the use of the same by said other defendants for said purposes, so that said defendant, William Marvin, is and was a principal with the other said defendants in carrying on said business of gaming in said rooms in said building for the period in her petition set forth in which said money was so lost by her husband therein.

And she prays judgment against the defendants as in her petition herein she hath prayed.

JOHN POE,
Attorney for Plaintiff.

87 EXHIBIT 12.

Journal Entry.

Thereupon counsel on behalf of plaintiff offered in evidence, the journal entry in said case No. 11,138, as found in Journal 23, page 392, which is put in evidence and marked Exhibit 12, a copy of which is in the words and figures following, to-wit:

BELLE B. TROUT, Plaintiff,
vs.
JAMES CLIFFORD and JACOB GASSMAN, Defendants.

This 21st day of September, 1896, came the said parties with their attorneys and the cause was dismissed as to William Marvin without prejudice; thereupon a jury, to-wit J. F. Harvey, William C. Shull, Lafayette Hull, S. F. Leeder, Sylvester Severs, Robert Cooper, Jacob Greesley, John Whistler, Herman Roggie, S. F. Hagerman, John C. Mitchell and William Compton was duly impaneled and sworn well and truly to try the issues joined between the said parties.

Thereupon the said jury after hearing the testimony of the witnesses, the argument of counsel and charge of the court in the case, upon their said oaths said that they found that the said defendants, James Clifford and Jacob Gassman, are guilty as the said plaintiff, Belle B. Trout, has in her petition in this case complained of
88 against them, and that they assessed the damages of the said plaintiff at the sum of thirteen hundred dollars ($1,300).

It is therefore adjudged that the said plaintiff recover from the said defendants, Clifford and Gassman, the said sum of $1,300 aforesaid and also her costs herein taxed at $— and it is further ordered that the said defendants, Clifford and Gassman, pay the costs by them made in this action to be taxed and in default thereof, that an execution issue therefor.

Thereupon counsel on behalf of plaintiff offered in evidence the papers in case No. 10,093, being the case of Martha Myers, plaintiff, vs. Clifford and Gassman, and Ancil Marvin and William Marvin, filed in the court of common pleas in October, 1893. (Objected to by counsel on behalf of defendant, William Marvin.) Counsel on behalf of plaintiff stated that the above papers are offered in evidence for the purpose of showing that on the 28th day of October, 1893, on the question of notice.

That these people were carrying on this business there on the 28th of October, 1893, and that Martha A. Myers sued Clifford and Gassman, and sued with them, William Marvin, this defendant, and also his brother, for $1,000.

(Objected to by counsel on behalf of defendant; objection overruled, to which ruling of the court defendant then and there excepted.)

89 Thereupon the petition and answer in the above mentioned case No. 10,093 were put in evidence and marked Exhibit- 13 and 14, copies of which are in the words and figures following to-wit:

EXHIBIT 13.

THE STATE OF OHIO, }
Hancock County. }

Court of Common Pleas.

MARTHA A. MYERS, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, ANCIL E. MARVIN, and WILLIAM MARVIN, Defendants.

Petition.

The plaintiff is the wife of Luther M. Myers and the mother of his three small children, and that she and her said children are wholly dependent upon her said husband for support.

That defendants, Ancil E. Marvin and William Marvin, own lots eighty-five (85) and eighty-six (86) in the city of Findlay with the buildings thereon and have so owned the same for more than three years last past, parts of which buildings they have for said period had leased to the defendants. James Clifford and Jacob Gassman, for gaming and gambling purposes, and which said Marvins,
90 for all said period, knowingly permitted to be used by said Clifford and Gassman for gaming purposes, and for all said time failed in good faith or at all to prosecute any action or proceedings for the recovery of said premises from said defendants, lessees thereof.

She says from April 1st, 1892, to April 24th, 1893, the defendants were so conducting and keeping on said premises gambling rooms with the usual personal property and gambling devices used in gambling and gaming and playing games of chance. That from April 1st, 1892, to April 24th, 1893, the said Luther M. Myers lost at gambling with the defendants in said rooms in playing with defendants at games of chance, the sum of one thousand dollars, which as so lost he paid to the defendants. That more than six months elapsed after said money had been lost and paid and yet said Luther M. Myers has failed without collusion with plaintiff or any one else and without deceit to sue for or prosecute with effect or at all for said money so lost and paid the defendants.

By reason of the facts aforesaid the defendants are indebted to plaintiff in the sum of one thousand dollars received by defendants won of plaintiff's said husband at gaming, and by him paid to defendants whereby an action accrued to plaintiff's said husband under the statute against gaming and which action he so neglected and failed for six months to prosecute, whereby this plaintiff is en-

titled under said statute to bring this action therefor, and
91 plaintiff therefore prays judgment against the defendants for said sum of one thousand dollars with interest from April 24th, 1893.

JOHN POE,
Attorney for Plaintiff."

EXHIBIT 14.

In the Court of Common Pleas, Hancock County, Ohio.

MARTHA A. MYERS, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, ANCIL E. MARVIN, and WILLIAM MARVIN, Defendants.

Separate Answer of James Clifford and Jacob Gassman.

The defendants, James Clifford and Jacob Gassman, now come and for their answer in the cause say: That they admit that the plaintiff, Martha A. Myers, is the wife of Luther M. Myers, but as to whether she is the mother of three small children they do not know.

They deny that they have ever rented any buildings or property from Ancil E. Marvin, but they say that they are the tenants of William Marvin, and have rented from him and are now in possession of a building situate on lot number eighty-six (86) in said city of Findlay, Ohio, and have rented and have been in possession of the same for a number of years last past.

92 They deny that they or either of them have rented or leased the same from the said William Marvin or any other person for the purpose of gambling or for gaming purposes as is alleged in said petition. Deny that Luther M. Myers ever lost anything at gambling in or on their premises. Deny that they *do* either of them ever played with or won any money or thing of value from said Luther M. Myers.

Deny that said Luther M. Myers lost in gaming with them or any other person upon their premises, the sum of one thousand dollars or any other sum.

Deny that they or either of them are indebted to plaintiff in the sum of one thousand dollars or any other sum.

Deny that plaintiff has any cause of action against them or either of them.

And they deny each and every allegation in said petition other than that plaintiff is the wife of Luther M. Myers, and they pray that they may go hence without day and recover their costs herein.

MEEHAN & JORDAN,
Attorneys for Defendants.

Thereupon counsel on behalf of plaintiff, offered in evidence the summons and return in the same case No. 10093.

(Objected to by counsel on behalf of defendant, William Marvin, objection overruled, to which ruling of the court defendant then and there excepted.)

93

EXHIBIT 15.

Summons and Return.

Thereupon the summons in case No. 10093 was put in evidence and marked Exhibit 15, a copy of which is in the words and figures following, to-wit:

"THE STATE OF OHIO, }
Hancock County, } ss:

To the sheriff of Hancock county, Greeting:

You are commanded to notify James Clifford, Jacob Gassman, Ancil E. Marvin and William Marvin that they have been sued by Martha A. Myers in the court of common pleas of Hancock county, and that unless they answer by the 25th day of November, A. D., 1893, the petition of the said plaintiff against them filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 6th day of November, A. D. 1893.

Witness my signature as clerk of said court, and the seal thereof at Findlay, this 28th day of October, A. D. 1893.

LOUIS P. JULIEN, *Clerk,"*
By J. W. DAVIDSON, *Deputy.*

"THE STATE OF OHIO, }
Hancock County, } ss:

I received this writ October 28th, 1893. In obedience to the command thereof, I, on the 30th day of October, 1893, notified the within
94 named James Clifford, Jacob Gassman, Ancil E. Marvin and William Marvin, by delivery to each of them personally a true and certified copy thereof with all the endorsements thereon.

JOS. T. BARTOON, *Sheriff,*
By ELI PUTNAM, *Deputy.*

Returnable November 6th, 1893. Summons in action for amount claimed $1,000, with interest from April 24th, 1893.
Filed Nov. 4th, 1893.

LOUIS P. JULIEN, *Clerk."*

Thereupon counsel on behalf of plaintiff offered in evidence in the same case No. 10093 a demurrer filed by Mr. Marvin to the petition, which was read in evidence and marked Exhibit 16, a copy of which is in the words and figures following, to-wit:

EXHIBIT 16.

Court of Common Pleas, Hancock County, Ohio.

"MARTHA A. MYERS, Plaintiff,
vs.
JAMES CLIFFORD, JACOB GASSMAN, ANCIL E. MARVIN, and William Marvin, Defendants. } (No. 10093.)

Demurrer.

Now comes the said defendants, Ancil E. Marvin and
95 William Marvin and demur to the petition of the plaintiff because they are improperly joined as defendants with the said James Clifford and Jacob Gassman.

These defendants therefore pray that because of said misjoinder that they be dismissed from the action with their costs.

ALFRED GRABER,
Att'y for Ancil E. Marvin and William Marvin."

EXHIBIT 17.

Journal Entry.

Thereupon counsel on behalf of plaintiff offered in evidence a journal entry found in Journal 29, page 485, of the common pleas court, showing the disposal of this case, which was read in evidence and marked Exhibit 17, a copy of which is in the words and figures following, to-wit:

"MARTHA A. MYERS, Plaintiff,
vs.
JAMES A. CLIFFORD ET AL., Defendants. }

By agreement of parties, this cause is settled at defendants' costs. It is therefore considered that the defendants pay the costs herein made and in default thereof that execution issue therefor.

MARTHA A. MYERS.
CLIFFORD & GASSMAN."

Thereupon counsel on behalf of plaintiff stated that he wished to offer the papers in case No. 7412 in the common pleas court, (the

petition was filed in 1891), being an action in which Charlotte
96 Carlin sued Clifford & Gassman while they were in this building for $10,000 for the purpose of showing that it was a gambling case and that Marvin signed notes to help them out.

(Objected to by counsel on behalf of defendant Marvin; defendant's counsel stated that defendant Marvin had no knowledge what this suit was about and that knowledge cannot be proved by the introduction of these papers; they establish nothing.)

Counsel on behalf of plaintiff thereupon offered in evidence all the papers in case No. 7412, being the petition, amended petition, answers and replies, also the journal entries.

(Objected to by counsel on behalf of defendant Marvin; objections overruled, exceptions by defendants.)

Thereupon defendant's counsel admitted that Charlotte Carlin sued these men for money alleged to have been lost there, and got a judgment for $3,000 at whatever date these papers show the judgment was obtained; it is also admitted that Marvin did sign a note, not admitting that Marvin knew what the suit was for.

Defendants' counsel also admitted that the suit was against his (Marvin's) tenants, and that they occupied these premises, and that for a period of time, two or three or four years before this action. It is also admitted by all parties hereto, that the time mentioned in the petition in the above mentioned case No. 7412 three years preceding 1890, was within the time covered by these papers offered.

97 Thereupon said above mentioned papers, being the petition, answer, amended petition, replies and journal entries, were read in evidence and marked Exhibits 18, 19, 20, 21, 22, 23, 24, 25, copies of which are in the words and figures following, to-wit:

EXHIBIT 18.

Court of Common Pleas, Hancock County, Ohio.

"CHARLOTTE F. CARLIN, Plaintiff,
vs.
CLIFFORD & GASSMAN, JAMES W. CLIFFORD, and JACOB GASSMAN, Defendants.

Petition.

The defendants, Clifford & Gassman, are a co-partnership firm by the name and style above indicated formed for the purpose of doing business in the State of Ohio but not incorporated.

This plaintiff is the wife of one Gage Carlin, a resident of the city of Findlay, Ohio.

That at all time herein stated the said defendants, in violation of law and against the form and prohibition of the statute in such case

made and provided have run and conducted a gambling room or rooms in a building by them rented and especially fitted for the purpose in a building known as the Marvin block on the east
98 side of Main street in the said city of Findlay, Ohio, wherein they, the said defendants, with their clubs, dealers, associates employees and assistants, have gambled and played and conducted games for money and property by means of faro bank (so called) and other unlawful gambling devices and appliances by the said defendants in said rooms for that purpose kept and maintained.

That within the three years last preceding the 1st day of August, 1890, to-wit, between August 1st, 1887, and August 1st, 1890, the said Gage Carlin, husband of this plaintiff aforesaid, while gambling with the said defendants at and in their said gambling rooms, has lost and paid to the said defendants and their said agents, dealers, assistants, and associates in said gambling enterprise, and the said defendants have by themselves and their said dealers, assistants won and received of and from the said Gage Carlin and converted and appropriated to their own use by means of said unlawful game of faro and other gambling games as aforesaid at divers times within the period aforesaid, and in divers sums, over fifteen thousand dollars in the aggregate, whereby a just claim and cause of action for that sum accrued to the said Gage Carlin against the said defendants under the statute of Ohio in such case made and provided.

And this plaintiff further alleges that the said Gage Carlin did not within six months after the said 1st day of August, 1890 (without collusion or deceit), sue and with effect prosecute the defendants for the money so as aforesaid lost and paid to them as herein-
99 above stated and set forth whereby a cause of action therefor accrued to this plaintiff under the provisions of section 4273 of the Revised Statutes of Ohio.

Wherefore this plaintiff prays judgment against the said defendants for fifteen thousand dollars with interest thereon from the 1st day of August, 1890.

CHARLOTTE F. CARLIN,
By GEORGE H. PHELPS AND
JASON BLACKFORD, *Att'ys.*"

100 EXHIBIT 19.

In the Court of Common Pleas, Hancock County, Ohio.

"CHARLOTTE F. CARLIN, Plaintiff,
vs.
JAMES H. CLIFFORD and JACOB W. GASSMAN, Defendants.

Amended Petition.

The plaintiff comes and on leave given by the court files her amended petition, and for cause of action against the defendant says:

1st. Plaintiff is now and for several years has been the wife of Gage Carlin, and residing in the city of Findlay, Ohio.

The defendants, James H. Clifford and Jacob W. Gassman, as partners under the firm name of Clifford & Gassman, for more than two years last past have carried on business in the city of Findlay, in said county, in a building known as the Marvin block, as the keepers of a restaurant and saloon, and in connection with said business, in certain rooms in said building, they placed and operated certain gaming and gambling devices, to illegally gamble and play certain games upon wagers and bets, that for and during all of said time defendants, by themselves, their agents and employees
101 at said place, carried on the game- of faro, poker, and other gambling games, betting and winning money thereby.

The plaintiff says further. More than six months before the commencement of this action, and between the 1st day of August, A. D. 1887, and the 1st day of August, A. D. 1890, said defendants, at their said gaming rooms, at different times between said dates, won from said Gage Carlin, at the games of faro, poker, and other gambling games and games of chance, over and above the several sums won by said Carlin, the sum of ten thousand dollars, which said sum of ten thousand dollars in all said Gage Carlin, in various sums, and as said sums were played and won by defendants, were paid to defendants by said Gage Carlin, and converted by defendants to their own use.

Plaintiff cannot state the several dates of playing at such games, nor the amounts so won by the defendants and paid to them, by said Gage Carlin, between said 1st day of August, 1887, and the 1st day of August, 1890, but avers that the total amount so lost and paid above the amount won by said Carlin is $10,000.

The said Gage Carlin has wholly failed for the period of more than six months, after the time of such losses, without collusion on deceit, or at all, to sue and with effect to prosecute for the recovery of said money; wherefore the plaintiff sues to recover the same for her own use.

Plaintiff says that by reason of the facts above stated, de-
102 fendants are indebted to plaintiff in the sum of ten thousand dollars ($10,000) the money so lost by said Gage Carlin, and paid by him to defendants.

Plaintiff says further that by reason of said losses and moneys so paid to defendants by her said husband, she has been greatly injured in her means of support, and lost the support heretofore given her by her said husband.

The plaintiff therefore asks judgment against the said defendants for said sum of ten thousand dollars ($10,000) with interest from August 1st, 1890, and for all proper relief.

GEORGE H. PHELPS AND
JASON BLACKFORD,
Att'ys for Plaintiff."

103 EXHIBIT 20.

In the Court of Common Pleas within and for the County of Hancock and State of Ohio.

"CHARLOTTE F. CARLIN, Plaintiff,
vs.
CLIFFORD & GASSMAN, JAMES W. CLIFFORD, and JACOB GASSMAN, Defendants.

Second Amended Petition.

And now comes Charlotte F. Carlin, the plaintiff, and for her amended petition (leave of court being first given), says:

The defendants, Clifford & Gassman are a co-partnership firm by the name and style above indicated, formed for the purpose of doing business in the State of Ohio, but not incorporated.

This plaintiff is the wife of one Gage Carlin, a resident of the city of Findlay, Ohio.

That, at all the time- herein stated the said defendants in violation of law and against the form and prohibition of the statute in such case made and provided, have run and conducted a gambling room or rooms in a building by them rented and especially fitted for the purpose in a building known as the Marvin block on the east side of Main street in the said city of Findlay, Ohio, wherein they
104 the said defendants with their clerks, dealers, associates, employees and assistants have gambled and played and conducted games for money and property by means of a faro bank (so called) and other unlawful gambling devices and appliances by the said defendants in said rooms for that purpose kept and maintained.

That within the eighteen months last preceding the 6th day of February, 1891, to-wit: between August 6th, 1889, and August 6th, 1890, the said Gage Carlin, husband of this plaintiff aforesaid while

gambling with the said defendants at and in their said gambling rooms has lost and paid to the said defendants and their said agents, dealers, assistants and associates in said gambling enterprise, and they the said defendants have by themselves and their said dealers and assistants won and received of and from the said Gage Carlin, and converted and appropriated to their own use by means of said unlawful game of faro and other gambling games as aforesaid at divers times within the period aforesaid and in divers sums about $13,000 in the aggregate whereby a just claim and cause of action for that sum accrued to the said Gage Carlin against the said defendants under the statute of Ohio, in such case made and provided.

And this plaintiff further alleged that, the said Gage Carlin did not within six months after the said 1st day of August, 1890 (without collusion or deceit), sue and with effect prosecute the defendants for the money so as aforesaid lost and paid to them as hereinabove stated and set forth whereby a cause of action therefore accrued
105 to this plaintiff under the provisions of section 4273 of the Revised Statutes of Ohio.

Wherefore this plaintiff prays judgment against the defendants for $13,000, with interest thereon from the 6th day of August, 1890.

CHARLOTTE F. CARLIN,
By GEORGE H. PHELPS,
Her Attorney."

EXHIBIT 21.

Court of Common Pleas, Hancock County, Ohio.

"CHARLOTTE F. CARLIN, Plaintiff,
vs.
CLIFFORD & GASSMAN, JAMES H. CLIFFORD, and JACOB W. GASSMAN, Defendants.

Answer.

Now comes the said Clifford & Gassman, James H. Clifford and Jacob W. Gassman, defendants, and for their answer to the amended petition filed in this case on the 24th day of June, 1891, say: That they admit that said James H. Clifford and Jacob W. Gassman are partners under the firm name of Clifford & Gassman, and they admit that said Charlotte F. Carlin is the wife of said Gage Carlin, but deny that said parties are residents of the city of Findlay,
106 Ohio. Said defendants deny that said defendants won from said Gage Carlin between the 6th day of August, 1889, and the 6th day of August, 1890, the sum of thirteen thousand dollars ($13,000) or about that sum in any game whatever; and deny that said Gage Carlin paid said sum to said defendants in any game whatever within said time.

The following averment in said petition of said plaintiff is denied by said defendants, to-wit:

'That at all times herein state- the said defendants, in violation of law and against the form and prohibition of the statute in such case made and provided, have run and conducted a gambling room or rooms in a building by them rented and especially fitted for the purpose in a building known as the Marvin block on the east side of Main street in the said city of Findlay, Ohio, where they, the said defendants with their clerks, dealers, associates, employees and assistants, have gambled and played and *con* conducted games for money and property by means of a faro bank (so called) and other unlawful gambling devices and appliances by the said defendants in said rooms for that purpose kept and maintained.'

Said defendants further say that between the 6th day of August, 1889, and the 7th day of January, 1891, there were certain gaming transactions between said Gage Carlin and said defendants, in which said Gage Carlin lost and paid to said defendants the sum of twenty-seven hundred dollars ($2,700); and said defendants as a part of the same transaction delivered said sum of twenty-seven hundred dollars ($2,700) from time to time to said Gage Carlin as he
107 lost the same and took his promissory notes therefor and along for about a month before the 7th day of January, 1891, said plaintiff was complaining against said defendants as to the said games and transactions and was attempting to compromise the same with said defendants and that said Gage Carlin also on his part made some complaint to defendants concerning said game and transactions and said money so by him lost and which he had so received back and given his notes therefor; and on said 7th day of January, 1891, no suit then having been commenced by plaintiff or any one else, and said Gage Carlin having the right in himself to bring said action and with the knowledge and consent of said plaintiff said Gage Carlin proposed to said defendants that if they would surrender his said notes for the sum of twenty-seven hundred dollars ($2,700) to him, and pay him the additional sum of five hundred dollars ($500) in cash, that he would settle and compromise all claims against said defendants growing out of said gaming transaction; and that said defendants in good faith and without collusion on their part, and as they understood it, in good faith and without collusoin on the part of the said Gage Carlin, accepted said offer and returned to said Gage Carlin said twenty-seven hundred dollars ($2,700) of promissory notes so held against him and paid him said sum of five hundred dollars ($500) in cash, and said Gage Carlin received and accepted said promissory notes and said sum of five hun-
108 dred dollars ($500) in full settlement of all claims arising from said gaming transactions, and thereby all claims against said defendants were settled, compromised and liquidated in good faith; thereby said plaintiff is barred of all right of action against said defendants growing out of said gaming transactions. And said defendants deny that said plaintiff at the time of commencing this

action or since has had any cause of action against said defendants for any sum whatever; and deny that there is anything due to said plaintiff from said defendants under the pretended cause of action in the petition set forth.

Afterwards on or about the 8th or 9th of January, 1891, and after said gaming transactions were all settled and compromised as aforesaid, said plaintiff and said Gage Carlin acting in collusion and for the purpose of still further mulching these said defendants and to get rid of said settlement and compromise so made in good faith, said Gage Carlin made his three promissory notes payable to the order of Abner L. Davis or bearer, one for the sum of one thousand dollars ($1,000) at six months, one for the sum of eleven hundred dollars ($1,100) at eighteen months, and one for the sum of eleven hundred dollars ($1,100) at two years, and placed the same in an envelope and securely sealed the same and asked said defendants to place the same in their safe, which they did; and in a few days thereafter said Gage Carlin absconded and left the country and remained away until within the last month when he returned; that after said notes had been so delivered to said defendants, by being placed
109 in their safe and long after said Gage Carlin had so absconded and said plaintiff had commenced this action, said defendants opened said envelope and found therein to their surprise said notes so payable to said Abner L. Davis or bearer, and they still have said notes in their possession, but they have no claim to the same; and now bring the same into court to be surrendered to said Gage Carlin or to any one else as he may direct; and they aver that said notes were so poked in upon them by said Gage Carlin in bad faith, and in collusion with said plaintiff for the purpose of getting rid of said compromise and settlement, which had been made before that time.

Wherefore defendants pray that this action be dismissed and that they recover their costs.

BURKET & BURKET,
E. T. DUNN, &
A. ZUGSCHWERT,
Defendants' Att'ys."

EXHIBIT 22.

"CHARLOTTE F. CARLIN
vs.
CLIFFORD & GASSMAN ET AL.

Reply.

And for her reply to the answer of the defendants, the plaintiff denies the same, and each and every allegation thereof except in so

far as said answer admits the averments and allegations
110 of the plaintiff's amended petition and the plaintiff prays judgment as in her amended petition.

GEORGE H. PHELPS,
Att'y for Plaintiff."

EXHIBIT 25.

"CHARLOTTE F. CARLIN, Plaintiff,
vs.
CLIFFORD & GASSMAN, JAMES H. CLIFFORD, and JACOB GASSMAN, Defendants.

Consolidated case No. 7412.

This day came the said Charlotte F. Carlin, plaintiff, with her attorney, and also came the said Clifford & Gassman, James H. Clifford and Jacob W. Gassman, defendants, with their attorneys, and thereupon came a jury, to-wit:

Who being duly impaneled and sworn according to law, and said cause having been tried and submitted to the jury, said jury on their said oaths say, that they find for the said plaintiff and assess her damages in said consolidated case against said defendants at the sum of three thousand dollars. Therefore said defendants waived all motions for a new trial and it is therefore considered that said plaintiff recover against said defendants said sum of three thousand dollars, her damages so assessed, together with her costs in and about this suit expended taxed at $—."

111 Thereupon counsel on behalf of plaintiff offered in evidence Journal 29, pages 260 and 261, showing judgments.

(Objected to by counsel on behalf of defendant. Defendant's counsel stated that the note William Marvin signed was for $2,000, to assist these men in settling that case; that is the use they made of it, but the defendant does not admit that they were intending to use the note for paying the debt.)

Thereupon counsel on behalf of plaintiff offered in evidence Journal 23, pages 116 and 117, for the purpose of showing that James Clifford was indicted on January 31st, 1891, on the charge of keeping and exhibiting a game of "faro bank" while he was in this building.

(Objected to by counsel on behalf of defendant, William Marvin.) Plaintiff's counsel stated that it was the only gaming place Clifford & Gassman kept, and stated that plaintiff would show by subsequent cases that they were both indicted at the same time under two indictments apiece, then would follow it up with proof that this is where that was done.

(Objected to by counsel on behalf of defendant, William Marvin.)

Thereupon the court overruled the motion only on the ground that it tends to show knowledge, to which ruling of the court, defendant then and there excepted.

Thereupon the said entry on pages 116 and 117 of the
112 Journal was read in evidence and marked Exhibit 26, a copy of which is in the words and figures following, to-wit:

SATURDAY, *Jan.* 31, 1891, *Sixth Day of January* —.

In the matter of the report of the grand jury witnesses.

This day came the following named persons to-wit: Z. T. Darrow, E. T. Dunn, J. P. Crone, David Joy, W. E. Heck, Y. Beckham, J. A. Vail, L. A. Cross, Frank Alspach, Chas. B. Hall, Z. T. Darrow, J. H. Winbush, John M. Barr, W. L. Carlin, J. M. Henninger, who were in open court duly sworn and sent to testify before the grand jury.

In the matter of the report of the grand jury.

This day appeared at the bar of this court, the grand jury heretofore impaneled and sworn in and for the body of the county, aforesaid, viz: Harrison A. Andrews, David L. Hilty, Lewis Runkle, Michael Bolwiler, Lycurgus Thurston, B. A. Foster, Henry Smith, George W. Franks, David Downing, F. M. Case, Frank Behm, Simeon Karn, Jacob Radabaugh, Oscar Sampson, Philip B. Kelley, and presented to the court through their foreman, Harrison A. Andrews, the following report, to-wit:

"And also their certain other bill of indictment against James Clifford for "keeping a room to be used for gambling" indorsed "A true bill," Harrison A. Andrews, foreman of the grand jury.
113 "And also their certain other bill of indictment against James Clifford for "keeping and exhibiting for gain a faro bank," indorsed "A true bill," Harrison A. Andrews, foreman of the grand jury.

Thereupon counsel on behalf of plaintiff offered in evidence Journal 23, pages 116 and 138 for the purpose of showing that Jacob Gassman was indicted on January 31st, 1891, on the charge of keeping a room or rooms used for gambling while he was in this building. (Objected to by counsel on behalf of defendant, Marvin, objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon said entry Journal 23, pages 116 and 138 *were* read in evidence and marked Exhibit 27, copies of which are in the words and figures following:

"SATURDAY, *Jan.* 31, 1891, *Sixth Day of January*.—

In the matter of the report of the grand jury witnesses.

This day came the following named persons, to-wit: Z. T. Darrow, E. T. Dunn, J. P. Crone, David Joy, W. E. Heck, Y. Bickham, J. A. Vail, L. A. Cross, Frank Alspach, Chas. E. Hall, Z. T. Darrow, J. H. Winbush, John M. Barr, W. L. Carlin, J. M. Henninger, who were in open court duly sworn and sent to testify before the grand jury.

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114 aforesaid, viz: Harrison A. Andrews, David L. Hilty, Lewis Runkle, Michael Bolwiler, Lycurgus Thurston, B. A. Foster, Henry Smith, George W. Franks, David Downing, F. M. Case, Frank Behm, Simeon Karn, Jacob Radabaugh, Oscar Sampson, Philip B. Kelly, and presented to the court through their foreman, Harrison A. Andrews, the following report, to-wit:

"And also their certain other bill of indictment against Jacob Gassman for "suffering games for gain to be played in his house" indorsed "A true bill," Harrison A. Andrews, foreman of the grand jury."

"WEDNESDAY, *Feb.* 4*th*, 1891,
Ninth Day of January Term, A. D. 1891.

THE STATE OF OHIO
vs.
JACOB GASSMAN, Defendant.

EXHIBIT 26.

Indictment for Keeping and Exhibiting for Gain a Faro Bank.

Now comes the prosecuting attorney on behalf of the State of Ohio, and the defendant being brought into court, was arraigned upon said indictment and for a plea, thereto, saith he is guilty; thereupon after hearing the testimony adduced and being fully advised in the premises, it is ordered and adjudged by the court that this cause be continued for sentence."

115

EXHIBIT 27.

"THE STATE OF OHIO
vs.
JACOB GASSMAN, Defendant.

Indictment for Suffering Games for Gain to Be Played in His House.

Now comes the prosecuting attorney on behalf of the State of Ohio, and the defendant being brought into court, was arraigned upon said indictment and for a plea, thereto, saith he is guilty; thereupon after hearing the testimony adduced and being fully advised in the premises, it is ordered and adjudged by the court, that the said Jacob Gassman pay a fine of one hundred dollars ($100) and the costs of this prosecution for which execution is awarded."

Counsel on behalf of defendant, William Marvin, moved the court to strike from the record, the entries above read on pages 116, 117 and 138 of the Journal 23. (Objection overruled to which ruling of the court defendant then and there excepted.)

Thereupon counsel on behalf of plaintiff offered in evidence the Weekly Morning Republican of date February 12, 1891, being a newspaper of general circulation over the country, for the purpose of showing that — this issue was the publication of these indictments, as tending to prove the defendant Marvin had notice of what was going on.

116 Counsel on behalf of defendant, Marvin, admitted that the paper of February 12th would show the publication of such article, but objected to its introduction on the ground it is incompetent. (Objection overruled, to which ruling of the court defendant then and there excepted.)

Thereupon said article contained in the Weekly Morning Republican of Feb. 12th was read in evidence and marked Exhibit 28, a copy of which is in the words and figures following, to-wit:

EXHIBIT 28.

"Gamblers fined.

Judge Johnson assesses heavy penalties upon five men found guilty of conducting gambling rooms."

Thereupon JACOB GASSMAN was introduced as a witness on behalf of plaintiff, who, being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Gassman, you reside in Findlay?
A. Yes, sir.

Q. How long have you lived in Findlay?
A. About since 1852.
Q. What is your business?
A. I am in the saloon business at present.
Q. How long have you been in the saloon business?
A. Probably twenty years.
117 Q. How long were you and James Clifford—you know him?
A. Yes, sir.
Q. How long were you in this Marvin block in business?
A. About seven years, somewheres along there, I guess.
Q. Will you tell this court about when you went into that building and into this business?
A. The latter part of the eighties, I don't know exactly.
Q. About 1888 or 1889?
A. Somewheres along there, yes, sir.
Q. In 1888 or 1889 you went in together there and continued business in this building, then up to about what time from 1888 or 1889 to what time?
A. Well, the building was remodeled, we were out of the building for a while, I don't know exactly how long, we opened up again, I think in 1890.
Q. Then how long did you continue there in business?
A. Until 1895.
Q. Now, Mr. Gassman, will you tell this court as to whether you occupied, your firm, the lower floor, and also the upper floor?
A. Part of the upper floor.
Q. Which part of the upper floor did you occupy?
A. Well, I think it was four rooms at the rear end of the building.
Q. What, if any, stairway was there at the end of the building to go up to these rooms?
A. There was a stairway from the inside at the rear end, also from the outside at the rear end.
118 Q. Was the outside stairway you refer to up from the alley?
A. Yes, sir.
Q. And the inside stairway started from the back end of your lower floor room?
A. Yes, sir.
Q. Let me ask you if these rooms that you kept at the back end on the second floor were accessible from either stairway, the alley stairway from the outside or the inside stairway?
A. They were.
Q. Let me ask you if there is a front stairway, a wide stairway from the front goes up?
A. Yes, sir, the hall way goes through clear through.
Q. The hallway went clear back to the landing of the back stairs?
A. Yes, sir.
Q. And how wide is that hallway?

A. Well, it is wider in front than it is in the rear. Probably eight feet in front or more, five or six in the rear.

Q. Now, let me ask you, Mr. Gassman, if there is any obstruction from one end of that hallway to the other, to prevent one from seeing back?

A. No, sir.

Q. Let me ask you what these rooms on the second floor of the back end were used for by you and Mr. Clifford during the whole of the time you occupied them?

(Objected to by counsel on behalf of defendant, Marvin, on the ground that the defendant has already admitted that these rooms were used for gambling purposes.)

Q. During the time you and Mr. Clifford were there, let me ask you what those upstairs rooms were used for?

A. Part of the time they were used for gambling.

119 Q. From 1890 on, they were used for gambling purposes, were they?

A. Part of the time; not all of the time, I guess.

Q. Do you know where Mr. Marvin lived during all of the time you occupied this building?

A. I think he lived in No. Findlay some place in the opera house.

Q. He had built a large opera house over in No. Findlay?

A. Yes, sir.

Q. Do you know about when he built that?

A. No, I don't know the date.

Q. That was how far from this building you was in?

A. About five or six blocks, I should judge.

Q. Five or six blocks away?

A. I should judge so, I don't know.

Q. Can you tell this court where Mr. Marvin had his office during that time?

A. He had an office in a block upstairs.

Q. In your block, in the block you occupied?

A. In his own, yes, sir.

Q. Where you had your rooms?

A. Yes, sir.

Q. How far was his office from these gambling rooms you had upstairs?

A. Well, it was quite a ways up above, as I think his office was the next floor.

Q. And he would have to pass through this hallway in order to reach his office?

A. Not clear through it, he could reach it from the front.

Q. Was his office directly over your rooms?

A. I think not, he was in the front part of the building if I recollect.

120 Q. You think he was in the front part of the building?

A. I think so.

Q. Directly over your rooms?

A. I think not.

Q. Now, Mr. Gassman, do you recollect that in 1891 you and Mr. Clifford were indicted for keeping a faro and gambling place, do you recollect that fact?

A. I recollect the fact, yes.

Q. Now tell the court, will you, whether at the time you were indicted and you entered a plea of guilty yourself, there, did you?

A. Yes, sir.

Q. And whether the gambling that was spoken of in that indictment was done in these same rooms?

A. Yes, sir.

Q. Kept there in the Marvin block, do you know what the indictment of Mr. Clifford was for, whether for the same transaction?

A. I don't know.

Q. But Mr. Clifford was with you at that time in these same rooms?

A. Yes, sir.

Q. Now, Mr. Gassman, let me ask you if you recollect in 1891 that Mrs. Gage Carlin sued you two people, you and your partner?

A. I recollect of being sued by Mrs. Gage Carlin.

Q. And for a gambling debt?

A. Yes, sir.

Q. When?

A. From 1887 to 1889, somewheres along there, I don't know exactly.

Q. Now tell the court whether that suit was for money—that suit was brought against you in this period, was during the time you and Clifford were in the Marvin rooms you speak of together?

A. It was.

121 Q. And tell the court whether during all that time you knew where Mr. Marvin was living?

A. I suppose he was living at the same place, I don't know.

Q. And whether he had his office in the same building as you related?

A. I think he did.

Q. And now let me ask you if you recollect of being sued by Mrs. Martha Myers in October, 1893? You and Mr. Clifford?

A. I think we were some time.

Q. And Mr. Marvin sued with you?

A. Yes.

Q. Tell the court whether at that time, if you recollect that you were occupying these same rooms of Mr. Marvin you speak of?

A. We were.

Q. And whether this suit was for losses claimed to have occurred in these rooms?

A. It was.

Q. Now, Mr. Gassman, during all of the time you occupied these rooms, let me ask you if you recollect how much rent Mr. Marvin received for these rooms from you?

(Objected to by counsel on behalf of defendant, Marvin. Counsel on behalf of plaintiff stated that he desired to show that there was double rent collected for these rooms and right in 1893, more than they were worth for any legitimate purpose; objection overruled; to which ruling of the court, defendant then and there excepted.)

Q. That is about 29 ft. wide, is it, across there?
A. Somewheres there.
Q. It is the Bloomingdale store now is it and rooms above?
A. Yes, sir.

122 Q. Mr. Gassman, what did you pay to Mr. Marvin during that period you speak of for these rooms?
A. Something over $100.00 per month.
Q. Wasn't it $1,800.00 a year?
A. No, I don't think we paid him that much.
Q. Didn't your lease provide for that?
A. I think it did, but we only paid $110.00.
Q. Do you recollect at the last trial you testified you paid $1,800.00 per year?
A. That was the contract.
Q. How does it happen that you did not pay the contract price?
A. We objected to paying that much and Mr. Marvin finally agreed to receive $110.00; I think that is it.

By Mr. PHELPS:

Q. Your place was the entire first floor and rooms above?
A. Yes, sir.
Q. You say you made a contract at $1,800.00?
A. I think we had a contract at $1,800.00, then paid $110.00, that is my recollection.
Q. Now, how was that additional made up, Mr. Gassman?
A. Why, it wasn't made up that I know of, it was not made up. Not that I know of.
Q. Were those back stairs there, Mr. Gassman, when you moved there?
A. Yes, sir.
Q. They were there before that?
A. They were there after the building was remodeled.
Q. They were there when you started up in 1889?
A. Yes, sir.

123 Q. During the time you had your cessation in business, the building was repaired, and these back stairways were there when you went back?
A. Yes, sir.
Q. Had they been there before?
A. Why, I don't think they were there in 1887.
Q. On the inside?
A. Not on the inside, no, sir.

Q. Let me ask if there was constructed, from the saloon proper up to the rooms, a dumb waiter?

A. There was at one time, yes.

Q. That was after this remodelling by Mr. Marvin?

A. Yes, sir.

Q. After Mr. Marvin had remodelled?

A. Yes, sir.

Q. Let me ask you if right opposite the gambling rooms, there was provided a water closet?

A. Yes, sir.

Q. Let me ask you if that was there before Mr. Marvin remodeled the building?

A. It was not.

Q. But when you went in again after the remodelling you found these things all ready?

A. Yes, sir.

Q. Now, after the repair of the building in 1890 let me ask you if you did not pay your $1,800 a year?

A. No, sir.

Q. Now, the $100 was for the down stairs room, was it not?

A. It was for the whole thing, the way I understand it. That is my understanding of it.

Q. Now, you took care of the down stairs and Mr. Clifford had charge of the gambling rooms, did he not?

A. Yes, sir.

124 Q. So you wouldn't know exactly what additional arrangements was up there, would you, or did you know?

A. If there was any, I think I would know it.

Q. Now, Mr. Gassman, let me ask you if, during this period and in 1892, 1893, and 1894, you folks had employed up in the upstairs room there to do the dealing, a man by the name of Knisel and another by the name of Gambee?

A. Yes, sir.

Q. Experienced gamblers?

A. I suppose they were.

Q. Do you know whether Mr. Marvin was acquainted with those men?

A. I do not.

Q. And for how many years did you keep these men employed there, these experienced people?

A. Oh, I cannot tell that, maybe a year or two.

Q. Their business was to deal bank, was it?

A. I think so.

Cross-examination.

By Mr. PHELPS:

Q. Mr. Gassman, what was the rental value of that property at the time that you occupied these rooms?

A. What we paid?

Q. No, what was the fair rental for purposes besides draw, poker and faro; what would it be worth for a clothing store?

A. I couldn't tell you; maybe $100 a month, maybe more, I don't know.

Q. Do you know the fact Bloomingdale is paying $140 a month for the same space?

A. I don't know.

125 Q. You don't say to the court that you were paying any more than the fair rental value of the property, do you?

A. No, I do not.

Q. Now, William Marvin, you have known him a long time, haven't you?

A. Yes, sir.

Q. He is a pretty good citizen, isn't he?

(Objected to by counsel on behalf of the plaintiff.)

Q. He is not an expert gambler?

A. I have never seen him gambling.

Q. Did you ever see him about the gambling rooms there, that were conducted by you and Mr. Clifford?

A. Never did.

Q. Did you know of his being there?

A. I did not.

Q. Did you ever have any business relation with him, or any conversation with him that would indicate that he had any knowledge of the kind of business that was going on there?

A. Not that I recollect of; I don't think I did.

Q. Now, do you know Frank Trout?

A. Yes, sir.

Q. Is he that good sized fellow with the big diamond in his shirt?

A. Yes, sir.

Q. Is that the same Frank Trout spoken of in the record here?

A. I think that is the one, yes, sir.

Q. I want to ask you if, at any time, whether Trout was frequenting these rooms, he said anything about wanting to keep out of sight of Marvin, not let Marvin know he was there? What did he say to you about that?

126 A. I think he came in once or twice and said he would like to have me show him the back way, he didn't want Uncle Billy to see him.

Q. Did he give you any reason why he didn't want Uncle Billy to know about it?

A. He didn't say anything about it.

Q. Uncle Billy was over in the opera house on the other side of the river in 1891, 1892 and 1893, wasn't he?

A. I don't know the dates, I know that he was building about that time.

Q. He superintended that business and was his own architect?

A. I don't know, I suppose so.

Q. And was there all the time? Now, state what the fact is about Mr. Marvin being on your premises, did you ever see him there?

A. Not very often, not in the saloon.

Q. Now, it is said William had an office in the building; were you ever in his office?

A. Not that I recollect of.

Q. And did you ever see him in his office?

A. I don't know as I did.

Q. Did you ever try to get into his office yourself?

A. No, sir. Not that I recollect of.

Q. Now, what do you know about the manner in which his business was done there during that time; that is, his rents, his collection of rents, do you know who done that?

A. Generally came into the saloon for the rents; I think Edson done that.

Q. His nephew?

A. Yes, sir.

127 Q. Now, here is another thing, Mr. Gassman, state to the court whether or not these rooms were public like gambling rooms in that sense, now, were they open and free to the public so anybody could go in or out as they pleased?

A. Well, they didn't walk in or out, anybody couldn't; anybody that wanted to gamble could, I guess.

Q. That is, if they had the password?

A. Yes.

Q. Now, these rooms were not accessible from the hall, were they, the public hallway?

A. No, it was locked.

Q. They were kept locked?

A. Yes, sir.

Q. If anybody wanted to go through there they must be admitted by some one that had a key?

A. Yes, sir, or have a key themselves.

Q. Do you know anything about the fact whether Mr. Trout had provided himself with a key by which he could get through there?

A. I couldn't tell anything about that.

Q. Was it a fact those that desired to frequent these rooms are provided with keys?

A. I think they were.

Q. What was the common ordinary mode of access to these rooms?

A. Well, some of them went in from the hallway, some went in through the saloon.

Q. Do you remember about Uncle Billy's being in California in 1890 and 1891?

A. I recollect of him being in California, but I don't remember the dates.

Re-direct examination.

By Mr. POE:

128 Q. Mr. Gassman, you say Mr. Trout said he didn't want Billy to see him going up the stairs?

A. Yes, sir.

Q. Up to your sleeping rooms?

A. Up to the gambling rooms, I suppose.

Q. What difference would it make to see him on the stairway unless Marvin knew about the gambling rooms?

A. I don't know.

Q. You wouldn't know what he was meaning by that?

A. No, sir.

Q. You say that Mr. Marvin owned the opera house block after he built it?

A. Yes.

Q. Do you know of his owning a building down close to the bridge there where Rox Aultman and Cramer kept?

A. I think he owned a building down there, yes, sir.

Q. During this same time?

A. Yes, I think he did.

Q. Down near the bridge?

A. Yes.

Q. Do you remember of Orlando Fox being in his building, in the Union block, in business?

A. No, I don't.

Q. Do you remember of Mr. Urban having a saloon and apartments in the opera house block?

A. No, sir, I don't know.

Q. Do you know whether Rox Aultman and Cramer kept a gambling place in connection with the saloon and business place near the bridge, the river bank, in Marvin's building?

(Objected to by counsel on behalf of defendant.)

129 Q. In another building of Marvin's during this same period?

(Objected to by counsel on behalf of defendant; objection overruled, to which ruling of the court, defendant then and there excepted.)

A. I do not.

Q. Now you speak of Edson Marvin collecting rents; you say he was a nephew or brother of Mr. Marvin?

A. He was a nephew.

Q. You say he came and collected the rents from all the tenants?

A. I don't know whether he collected from all of them or not; he collected from us most of the time.

Q. Did you notice him going through the upstairs rooms collecting rents?

A. No, I seen him up there; I don't know what he did.
Q. He would sign receipts for rents for Mr. Marvin, would he?
A. Yes, sir.
Q. Did Mr. Marvin tell you he was authorized by him to do his work there about the building, of that kind?
A. I don't recollect whether he did or not.
Q. How did it happen that you paid out to Edson?
A. Well, he came in.
Q. Or would he bring a receipt already signed from Mr. Marvin?
A. I think that was the way of it.
Q. He would bring a receipt signed up by Mr. Marvin?
A. I think that was the way.
Q. About how often would Edson be there at your place in
130 that way collecting up?
A. About once a month, I believe.

Re-cross-examination.

By Mr. PHELPS:

Q. Did you ever see Edson in these gambling rooms?
A. No, sir.
Q. By the upper rooms you don't mean where his gambling was being conducted?
A. I would see him on the stairway, going up the hall; there was a good many rooms there.

Thereupon FRANK H. TROUT was introduced as a witness on behalf of plaintiff, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. What is your business?
A. I am in the furniture business.
Q. You have your furniture store north of the bridge?
A. Yes, sir.
Q. How long have you been in the furniture business over there?
A. 15 years.
Q. Tell the court whether at one time you had your furniture store in Mr. Marvin's Opera House block?
A. Yes, sir.
Q. About when was that, tell the court?
A. April, 1892, until February, 1895.
Q. Now, I want to ask you where Mr. Marvin lived from, say, 1887 to 1895?
131 A. He lived in what is known as 300 North Main now, where the opera house block stands.

Q. You know where this Clifford and Gassman place is that we are speaking about in this law suit?

A. Yes, sir.

Q. How far was Mr. Marvin's residence from that place?

A. Less than half a mile.

Q. I want to ask you if about January, 1893, you had a talk with Mr. Marvin?

A. Yes, sir.

Q. I wish you would tell the court what the talk was?

A. Well, he had made arrangements with my wife to see us in the evening and he came and said that he understood that I had been gambling and had lost $500 the night before.

Q. And what else was said?

A. He said that I couldn't play with experts up there, and professional gamblers up there.

Q. Did he name any of them? At that time?

A. Not at that time, no, sir.

Q. Did he at any time, name those professionals?

A. He did when I first moved in the rooms.

Q. Who did he name?

A. Well, I think he named Mr. Clifford and a man by the name of Wilson and Mr. Gassman.

Q. What, if anything, did he say about Knisel or Gambee?

A. I don't think that Mr. Knisel was there at that time.

132 Q. Now, Mr. Trout, I will ask you if about April, 1893, you had a talk with him?

A. Yes, sir.

Q. And what was that talk about; tell the court what that talk was?

A. Why, the talk was about renting his rooms across the street from a furniture store.

Q. The Clifford and Gassman place?

A. Yes, sir.

Q. How did that happen?

A. I had been in his room in the opera house block just a year, and I think on the 20th of April, this talk took place, about the last of April or 1st of May, 1893; I wanted to see him about renting the room for a furniture store. I told him I would like to have the down-stairs where Clifford and Gassman had their saloon and billiard parlor for a furniture store, and the upstairs where the gambling rooms were, for the parlor furniture and carpets.

Q. You wanted to move south of the river?

A. Yes, sir.

Q. Did you tell him that?

A. Yes, sir.

Q. What did he say about renting this room for the furniture store?

A. He said I couldn't afford to pay the rent. I think I asked him

how much they were paying, and he said that they paid him $1,800 a year.

Q. What else did he say?

A. I said I thought he could rent it cheaper than that to a legitimate business; he said the rooms were rented for sleeping rooms and he wasn't supposed to know what was going on there.

Q. Let me ask you, Mr. Trout—you have been in these gambling rooms?

A. Yes, sir.

133 Q. And during the period alleged in this petition, let me ask you to state to the court, whether or not the money represented by these judgments in the two cases that were brought against Mr. Marvin, whether you lost that money in these rooms?

(Objected to by counsel on behalf of defendant, Marvin, to which ruling of the court defendant then and there excepted. Counsel on behalf of defendant, Marvin, stated that it was admitted that whatever was lost, if he lost anything, he lost there.)

Q. You say you lost this money represented in both judgments during the period represented there?

A. Yes, sir, and I lost more too.

(Objected to by defendant Marvin's counsel. Answered while objecting.)

Q. State whether you lost it at Clifford and Gassman's?

A. Yes, sir.

(Counsel on behalf of defendant Marvin objected to the above answer and moved the court to strike out so much of the answer as relates to the fact and the extent of the loss, on the ground it is not alleged in the petition and not an issue of fact in the case. Which motion the court overruled, to which ruling of the court defendant then and there excepted.)

Q. Do I understand you, Mr. Trout, as to whether the moneys were lost at gaming in this building, were represented by these judgments?

A. Yes, sir.

Q. And within the period alleged in these petitions respectively?

A. Yes, sir.

Q. And at Clifford & Gassman's?

A. Yes, sir.

134 Q. Now, Mr. Trout, do you recollect the equipment of these rooms, do you recollect about the stairway that goes up to it?

A. Yes, sir.

Q. How many were there?

A. There were three.

Q. Where were they located?

A. One was located in the front part of the building, the hall run along through the building; there was one from the back there on the alley, and there was one from the inside, from the billiard parlor to the rooms.

Q. Do you know whether there was what is called a "dumb waiter" furnished to these rooms, from below?

A. I think there was, yes sir.

Q. And a water closet in connection with these rooms?

A. Yes, sir.

Q. And do you know whether these attachments were provided there during the time Mr. Marvin put the repairs on the building?

A. I can't answer that.

Q. Now, I want to ask you, Mr. Trout, if along about the fore part of April, 1894, you gave a check for a gambling debt to Mr. Clifford or Clifford and Gassman there for $245, for a gambling debt up there?

A. Yes, sir.

Q. That you lost in gambling there?

A. Yes, sir.

Q. That is no part of the amount that went into the judgment?

A. No, sir.

Q. Can you tell us any conversation you had with Mr. Marvin with reference to that check of $245, about the 10th of April, 1894, do you recollect that to be about the day?

135 A. Yes, sir, the 10th of April, I gave a check for $245, for more than I had money to pay for and the next morning the payment was stopped on the check.

Q. How was the payment stopped, if you know?

A. I phoned to Mr. Hull, cashier of the Farmers' national bank and stopped the payment.

Q. How did it happen that you stopped it?

(Objected to by counsel on behalf of defendant; court ruled that it shall be answered if it is preliminary.)

Q. How did you happen to telephone there?

A. Well, my wife said that if I didn't stop it, she would, so I thought rather than bring her into the case, I would stop the payment.

Q. She learned the check was given by you?

A. Yes, sir.

Q. Now, Mr. Trout, how soon after the night you gave the check, if you can tell, was it you had the talk with Mr. Marvin about this check?

A. I think it was on the 11th perhaps, in the afternoon.

Court ruled that the above answer as to what his wife said to him as to stopping the payment of the check may be stricken from the record.

Counsel on behalf of defendant Marvin stated that this transaction and the occurrence transpired after the period they are inquiring about. Plaintiff's counsel stated it was the same period precisely.

Q. Mr. Trout, you say that Mr. Marvin came to speak to you about this check you had stopped in the morning?
A. No.
Q. Or in the afternoon?
A. Yes, sir.
136 Q. That same afternoon?
A. Yes, sir.
Q. Where did he come to see you?
A. Came to my store.
Q. That is Mr. William Marvin, this defendant?
A. Yes, sir.
Q. What did he say?
A. Said he learned that I had stopped a gambling check of $245; I hadn't ought to have done it; I ought to have told Jim, and he would have held it until I could have taken care of it.
Q. Who was he speaking of when he said Jim?
A. James Clifford.
Q. What further did he say about it?
A. He said it would hurt my credit.
Q. What did you say to him?
A. My credit was too good there; I wanted to hurt my credit.
Q. Now, Mr. Trout, let me ask you if, after he had the talk with you in April, on April 10th or 11th, 1894, about this check, if you know whether that gambling house continued right along?
A. Yes, sir.
Q. And whether you were up until June 20th?
A. I was there until along about the first of June.
Q. Until the 1st of June?
A. Yes, sir.
Q. Tell the court whether the gambling rooms continued then as they had been before?
A. Yes, sir.

Cross-examination.

By Mr. PHELPS:

Q. How is business, Mr. Trout?
A. Good.

137 Thereupon BELLE B. TROUT, was called as a witness on her own behalf, and being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. You are the wife of Frank H. Trout?
A. Yes, sir.
Q. For how many years have you been married?
A. Fifteen.
Q. Your husband was in the furniture business all that time?
A. Yes, sir.
Q. Where did you live during that time?
A. The first six years and a half we lived at No. 316 North Main.
Q. How far from Wm. Marvin's residence?
A. Just 50 ft. lot between us.
Q. He lived, then, in the opera house block?
A. Well, the opera house wasn't built then.
Q. After that you lived where?
A. No. 128 Center St.
Q. How far is that from the opera house where Wm. Marvin lives?
A. Not quite 400 feet from Main street, and he lived on the corner of Center, head of Center St. on Main.
Q. So you have lived near neighbors to him all this time?
A. Yes, sir.

Q. How far is it from where Mr. Marvin lived to the Clifford
138 and Gassman rooms, over where Bloomingdale is now, if you know?
A. Oh, I suppose about five or six blocks.
Q. Across the river?
A. Yes, sir.
Q. I want to ask you, Mrs. Trout, if you had any talk with Mr. Marvin in Jan., 1893?
A. Mr. Marvin had the talk with me.
Q. Tell the court about that, in Jan., 1893?
A. He came to me in the afternoon and asked me if I knew that Frank had lost $500 the night before, gambling. I told him I did not and he said he wanted to have a talk with us after supper, and that George, that was his nephew, was working for us, he would go out when he came in, and he wanted to talk with us together.
Q. He would have George go out?
A. Yes, sir.
Q. Now then, did you meet him that evening for a talk?
A. He met us in the store.
Q. In your store?
A. Yes, sir.
Q. Your store was then in the opera house block?
A. Yes, sir.

Q. Tell the court about it?

A. Well, he talked with Mr. Trout, he told me——

Q. In your hearing?

A. Yes, sir. He told him he heard he had lost $500 the night before gambling, and that he couldn't afford to secure him any more, if that was the way he was going to do, and that he didn't need to think that he could beat professionals up there, for he couldn't.

Q. Now, was there anything more said that you recollect, at that time?

A. Not at that time.

139 Q. Now let me ask you whether, in April, 1893, at the time when you went to the store for your husband for dinner, you had any further talk with him, and where you met him, if you did?

A. I met him in front of the store and he walked up to our home at 316 North Main.

Q. Walked with you?

A. Yes, sir, and he said, "Did you know Frank was gambling again?"

Q. Was that in April, 1893?

A. I can't tell if it was in April, it was either March or April. I said, "If he is, I can tell you where he is doing it." He said, "No," he said, "Where?" I said, "In Clifford and Gassman's room, and in Bill Marvin's building."

Q. That is the way people spoke of him?

A. Yes, sir. He said, "No, I think not, they tell me they are not gambling there." I said, "I don't think anything about it, I know it."

Q. What did he do about being emphatic?

A. He stamped his cane on the walk.

Q. Now, Mrs. Trout, let me ask you, you heard us talk about a check?

A. Yes, sir.

Q. Let me ask you if, about the 10th or 11th of April, 1894, you had any talk with Mr. Marvin, or heard anything about this gambling check?

A. He had a talk with me.

Q. Where was it?

A. He came to me, I was in front of his store.

Q. Over north?

A. Yes, sir. He wanted to know if I knew Frank had stopped a gambling check of $245; I told him I did and I had helped to stop it.

140 Q. What was the fact about that?

A. Well, he had given a check for $245 more money than he had in the bank, checked it all out and that much more.

Q. What did he say to you?

A. I asked him if Clifford told him, and he said, "Clifford didn't

tell me." I said, "The bank didn't tell you." He said, "No, the bank didn't tell me."

Q. You say that was the same afternoon that the check was stopped in the morning?

A. I know it was right the next day after the check had been stopped in the morning.

Q. Now, did you have personal knowledge of your husband going up there to these places at any time, that is, whether you saw him go up there?

A. I saw him go up the back stairway.

Q. He didn't know you were looking, did he?

A. He did not.

Q. Now, let me ask you, Mrs. Trout, if you had any talk with Mr. Marvin, the defendant, after you commenced to look after this matter yourself, in looking after a legal remedy about it?

A. I had met Mr. Clifford at your office, and had a talk with him, I had gone to your office, and sent for him, rather, and the next afternoon, I couldn't say whether it was the same day or the next day——

Q. That was after this period?

A. Yes, sir. Mr. Marvin came to me and remonstrated, told me it would hurt Mr. Trout's credit, and there would be other
141 suits brought, and he would have rather deed me a farm than have me sue Clifford and Gassman.

Q. Tell the court whether, from what he said to you, whether he learned from Mr. Clifford you were looking into this matter?

A. I supposed Mr. Clifford told him.

Q. What did he say about it?

A. I don't know that he said anything about it.

Q. Tell the court whether you had talked with any of the parties about it except Mr. Clifford?

A. No, sir.

(Counsel on behalf of defendant Marvin objected to the above answer and moved the court to strike the same from the record, for the reason that it was after they had brought suit. Plaintiff's counsel stated that he had not started the action yet. Court ruled that if this is connected with any thing, shows his knowledge, it is admissible; if it is not connected, it has no weight and is irrelevant. Counsel on behalf of defendant objected to the testimony of the witness in regard to conversations with Marvin since action was commenced. Objection sustained, to which ruling of the court plaintiff then and there excepted.)

Q. You were the plaintiff in all these cases in which these judgments were recovered?

A. Yes, sir.

Q. The same Belle B. Trout to whom these judgments were rendered?

A. Yes.

Cross-examination.

By Mr. PHELPS:

Q. How long have you known William Marvin?

142 A. I have known of him all my life.

Q. He has been on terms of friendship with you and your husband for a great many years?

A. I had never been very friendly with Mr. Marvin up to the time I was married and moved over on the north side.

Q. Now Mr. Marvin, for a good many years, was a financial backer of your husband, furnished him money, loaned him his credit?

A. Loaned him credit, I believe, to the amount of $3,000.

Q. To assist him in his business over there in the furniture business?

A. Yes, sir.

Q. He was often in your store?

A. Yes, sir.

Q. Came to you and your husband in a spirit of friendliness and cautioned you about Frank's habits?

A. It was not in a spirit of friendliness.

Q. He done that?

A. Yes, sir.

Q. And he wanted to have a talk with you and him together?

A. Yes, sir.

Q. Came there and told you he had learned Frank had been gambling and lost a large sum of money?

A. Yes, sir.

Q. And told him he couldn't do that, he couldn't afford to do that, he couldn't gamble with those professionals?

A. Yes, sir.

Q. And Frank had his store in Mr. Marvin's rooms for a long time?

A. Yes, sir.

143 Thereupon A. E. HARDESHELL was introduced as a witness on behalf of plaintiff, who, being duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Hardeshell, where do you live?

A. I live in Findlay.

Q. What is your business?

A. The coal business, dealing in hard coal this winter.

Q. Where do you live with reference to Mr. Marvin's residence, the distance of it?

A. I don't know exactly where Mr. Marvin lives.

Q. Right behind Pullin's drug store on Center street?
A. A block and a half from that.
Q. How long have you lived in Findlay?
A. About thirty years.
Q. Were you at one time traveling on the road for a while?
A. Yes, sir.
Q. For a company?
A. Yes, sir.
Q. When was that about?
A. Well, I traveled for a Findlay company, a dry goods company, between 1893 and 1896.
Q. You would be at home in Findlay at nights?
A. Yes.

Q. You have been acquainted with Mr. Marvin how long?
144 A. Well, I have known Mr. Marvin to know who he was probably ever since I have been here, never was much acquainted with him.
Q. That is for a great many years?
A. Yes, sir.
Q. Did you know the place kept by Clifford and Gassman, across from the court house here?
A. Well, I have been up there a few times.
Q. You know the place?
A. Yes, sir.
Q. Let me ask you during the years from 1890 to 1895, if you could tell the court, or do you know Mr. Marvin lived there all the time during that time?
A. Yes, sir.
Q. Could you tell the court what the reputation of that building was, that place; can you tell the court what was the general reputation of that Clifford and Gassman place in the community here in Findlay and hereabouts?

(Objected to by counsel on behalf of defendant Marvin; objection overruled, to which ruling of the court defendant then and there excepted.)

Q. Tell the court?
A. I understand now, it was a place——
Q. Not what you understood; what was the reputation among the people?
A. You mean whether they were gambling there or not?
Q. Yes, sir.
A. I understood it as such, that it was a gambling place.

Q. I ask you what the reputation was in the vicinity, as
145 to what kind of a place they were keeping?
A. That is about what I have answered.
Q. And what do you say was the reputation there?
A. As a gambling place.
Q. Now, Mr. Hardeshell, let me ask you if you can tell what the

reputation was out of the community, as traveling man if you learned?

(Objected to by counsel on behalf of defendant Marvin, objection sustained, to which ruling of the court plaintiff then and there excepted.)

Q. I want to ask you, Mr. Hardeshell, if at any time when you went to these gambling rooms yourself, you saw Mr. Marvin about and if so, how much?

A. When I went by myself, do I understand?

Q. Yes, sir.

A. I never went there by myself.

Q. I mean when you went there yourself?

A. I met him in the hall several times.

Q. Met him in that same hall there?

A. Yes, sir.

Q. Tell the court whether when you went into these rooms, he could see you from where he was, whether there was any obstruction between you?

A. I don't know of any obstruction; I never noticed any.

(Objected to by counsel on behalf of defendant; answered while objecting.)

Q. How far from the entrance of the gambling rooms was it you met him in the hall there?

A. I don't know.

146 Q. About how often did you meet him in that way, when you went up into these rooms?

A. I have never went into the rooms very often.

Q. About how often did you meet him the times you did go up?

A. I can't say that.

Cross-examination.

By Mr. PHELPS:

Q. Would you say that you have met him at all?

A. Yes.

Q. When?

A. During the time I went up.

Q. How can you happen to remember having seen Mr. Marvin up there in the hall when you were going up there five or six or seven years ago; was it an uncommon thing to meet anybody in that public hallway that extended through the buildings?

A. Yes, sir.

Q. And there were offices on both sides of the hall?

A. Yes, sir.

Q. Now how do you happen after the lapse of five or six or seven

years, how does it happen that you remember of meeting Mr. Marvin in the hall when you were going up to play poker?

A. I didn't play poker.

Q. What did you do?

A. I went up with a friend of mine to look on.

Q. Did you play?

A. No, sir.

Q. Now, did you ever hear anybody say anything about this being a gambling place except people that went there and
147 gambled; did you ever hear anybody else say anything about it?

A. Well, I don't know as I have.

Q. Now, what do you mean by this having a reputation of being a gambling place?

A. I don't know how I knew it; I knew it probably the same shape you knew it.

Q. You knew it was a gambling place because you had been there?

A. Yes, sir.

Q. And you remember of having talked with other people that frequented it for the same purpose?

A. Yes, sir.

Q. So whether anybody that didn't frequent it did have knowledge or know about it, you don't know; you never talked with anybody else about it?

A. Well, I have talked with other people about it.

Q. Since this law-suit was commenced?

A. No.

Q. Who did you ever talk with about this being a gambling place except people who gambled there?

A. That same question talked over, I have heard it talked over in the hotel offices over the country when I was out on the road.

Q. With men that had been there gambling?

A. Traveling men.

Q. Men that are in the habit of gambling?

A. I don't know.

(Counsel on behalf of defendant Marvin moved the court to with-
148 draw and strike from the record the testimony of this witness, Hardeshell, for the reason it is not competent. Decision reserved by court.)

Re-direct examination.

By Mr. POE:

Q. Let me ask you when you were up there at that place, about how many people would be in there?

A. Oh, I wouldn't be able to say, different numbers, sometimes there would be more than other times.

Q. About how many at any time?
A. Well, I never made any count of them; half a dozen or a dozen or such a matter.
Q. Now, did you ever see Frank Trout up there playing sometimes?
A. Yes, sir.
Q. Do you know that he lost money there?
A. No, I don't.
Q. Didn't you know of him borrowing money up there when he run out himself or anything like that?

(Objected to by counsel on behalf of defendant; objection sustained, to which ruling of the court plaintiff then and there excepted.)

Thereupon ROBERT S. HIBBETT was introduced as a witness on behalf of plaintiff, who, being first duly sworn testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Hibbett, you live close to the city here?
A. I live in the city. 119 West street.
149 Q. You have lived in this vicinity or this city how long?
A. All my life, 40 years.
Q. Have you held official positions in the city?
A. I have, yes, sir.
Q. Tell the court what?
A. Well, I was deputy sheriff in this court, I was city marshal, and I was on the police force five or six years.
Q. That covered about what period of time, Mr. Hibbett?
A. About 1889 to 1896, I think.
Q. Now, you moved around the people in Findlay a good deal, did you not?
A. Yes, sir, I was out on the street a good bit.
Q. Did you know this Clifford and Gassman place during that period?
A. Yes, sir.
Q. Did you have the means of knowing what its reputation was?
A. Yes, sir, I did.
Q. Tell the court what the reputation of that place was during that period?
A. Well, it was a saloon and gambling house.
Q. That was the reputation you mean in this vicinity?
A. Yes, sir.

Cross-examination.

By Mr. PHELPS:

Q. You was the head of the police department here, was you?
A. From 1892 to 1894, yes, sir.
Q. And that was a gambling house was it?
A. Yes, sir.
Q. You would go in there, you say?
150 A. Never, no, sir, during these two years I didn't go up; I had previous to that.
Q. You thought a chief of police hadn't ought to go in there?
A. I didn't suppose they made a business of it.
Q. You hadn't any duty there?
A. There was never any affidavit filed.
Q. You were the chief of police and responsible for the morals of the city?
A. Yes, sir; they never had done so before that.
Q. You followed the precedent of your predecessors?
A. Yes, sir.

Re-direct examination

By Mr. POE:

Q. You say you were there before?
A. Yes, sir.
Q. When?
A. I came to the door when I was working under Mr. Totten as the police docket will show here in the police court.
Q. How did it happen you went there at that time, as policeman or sheriff?

(Objected to by counsel on behalf of defendant.)

A. I was deputy sheriff at that time.
Q. And whether you had orders from anywhere to go there?

(Objected to by counsel on behalf of defendant. Court stated that the witness had better tell the purpose of his visit.)

Q. What business, or what was the purpose of your visit?
151 A. We had a warrant for a gambling house, to make a raid on the gambling house.
Q. Let me ask you if you remember of the indictment against Clifford and Gassman?
A. That was after that; this raid was before that; this raid was when I was on the police force after spending two years on the police force, I was deputy sheriff from 1892. I went there when I was deputy sheriff, under Judge Johnston's instructions.
Q. Judge Johnston of the common pleas court?
A. Yes, sir.
Q. That was about the time of this indictment?

A. Yes, sir, that was when they plead guilty on the indictment, or Mr. Gassman did, it was the next morning after he plead guilty on the indictment.

Q. That you went under the orders of the court of common pleas?

A. Yes, sir.

Thereupon E. C. SHOWMAN was introduced as a witness on behalf of plaintiff, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Showman, you live where?

A. In Van Buren.

Q. That is how far north of town?

A. Right north of town on the east side, right in Van Buren.

Q. You live in Van Buren?

A. Yes, sir.

152 Q. How far north is Van Buren from Findlay?

A. Seven miles.

Q. Right on the street car line?

A. Yes, sir.

Q. What is your business?

A. Farmer.

Q. Are you related to Frank H. Trout?

A. Yes, sir.

Q. How?

A. His cousin.

Q. I want to ask you, Mr. Showman, if you know Mr. Marvin, the defendant?

A. I do when I see him, not personally acquainted with him.

Q. Will you tell the court whether or not in 1893 or the fore part of 1894, you knew the Clifford and Gassman place?

A. Yes, sir.

Q. Whether you were up there at any time?

A. I was.

Q. How many times were you up?

A. I was up three or four times.

Q. During that period?

A. Yes, sir.

Q. What were you going up there for during that time?

A. Playing poker and faro.

Q. Was Frank Trout up there at any time when you were?

A. I went with Frank Trout.

Q. About how many people did you find in there at a time, Mr. Showman?

A. There were about 8 or 10 or 12 or 15.

Q. Do you know whether Frank Trout lost any money there?

A. He did when I was with him, invariably.

153 Q. Were you in Findlay frequently at other times when you were not up there?

A. Oh, yes.

Q. You did your trading here largely?

A. Yes, sir.

Q. Did you have the means of knowing the reputation of this place during those years?

A. Well, they gambled, I guess, at least when I was there.

Q. What I mean is the reputation, about how it was talked about in the community here?

A. Well, Clifford's and Gassman's place was always known as a saloon and gambling house as far as I know.

Q. Among the people you mean?

A. Yes, sir.

Q. And what do you then say was its reputation?

(Objected to by counsel on behalf of defendant on the ground it is leading and suggestive.)

Q. What do you say to the court as to what the reputation of this place was during these years in the community?

A. It was a saloon and gambling place.

Thereupon WILLIAM EDWARDS was introduced as a witness on behalf of plaintiff, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Edwards, where do you reside?

A. 1303 North Main St.

Q. In Findlay here?

A. Yes.

154 Q. How long have you been a resident of the city of Findlay?

A. 56 years.

Q. What is your business?

A. I ain't in any business.

Q. Formerly your business was what?

A. Formerly I was in the harness business and later years my boys and I were in the shoe business.

Q. You held the office of water works trustee?

A. Yes, sir.

Q. How far did you live from where Mr. Marvin lived, if you know.

A. Sometimes we lived close, again other times we lived further apart.

Q. Lived all the time in North Findlay, both of you?

A. Well, no, since 1887, I have lived north of the river and I think some years before that Mr. Marvin lived north of the river, likely three-fourths of a mile north of the river. Later years Mr. Marvin moved into what is called the opera house block, then we were about 300 feet that our residences were apart.

Q. Do you know where the Clifford and Gassman place was?

A. Yes, sir, I know where the rooms were.

Q. That is where Mr. Bloomingdale's store is now?

A. Yes, sir.

Q. Did you have the means of knowing from 1890 to 1895 what the reputation of this place was in this community?

A. Well, from being around among the citizens, I was hearing the talk and hearing the remarks made about it, and that would be the only way I would have the means of knowing.

155 Q. Well, now what was that reputation?

A. It was the common reputation and talk on the street, they kept a fancy gambling house in connection with this saloon.

Cross-examination.

By Mr. PHELPS:

Q. Did you tell the court that you are not doing business now at all?

A. Yes, I am in partnership with Mr. Phelps.

Q. Ain't you and I running a truck farm?

A. Yes.

(By Mr. POE:)

Q. You have to do all the work, don't you, on the farm?

Thereupon GEORGE W. ROBINSON was introduced as a witness on behalf of the plaintiff, who being first duly sworn, testified as follows:

Direct examination.

By Mr. POE:

Q. Mr. Robinson, you live in Findlay, do you?

A. Yes, sir.

Q. You have lived here how long?

A. Off and on, I have lived here 65 years; I was born here.

Q. What has been your business, Mr. Robinson?

A. Stove and tin ware.

Q. Do you know Mr. Marvin?

A. Yes, sir.

Q. You have known him how long?

A. Since I was a boy.

156 Q. Now in the last, say from 1887 to 1895, he lived about where?

A. I can't answer that.

Q. Let me ask you if you knew where the Clifford and Gassman place was over there?

A. Yes, sir.

Q. About how far did Mr. Marvin live from you during that time?

A. I don't know where Mr. Marvin lived at that time.

Q. When he lived in the opera house block at Center St. there, that is about how far from this building?

A. Pretty near half a mile.

Q. Now, Mr. Robinson, during the years from 1885 to 1895, have you means of knowing the reputation of the Clifford and Gassman place across the street here?

A. Yes, sir.

Q. In the community?

A. Yes, sir.

Q. Tell the court what its reputation was, I mean during that period?

A. What the reputation of the building was?

Q. Yes, sir?

A. The reputation at that time was it was a gambling place, that was the reputation.

And the foregoing being all the evidence offered in chief by said plaintiff, said plaintiff rested her cause.

(Counsel on behalf of defendant moved the court to withdraw and strike from the record all the evidence offered by the plaintiff relating to the reputation of this building in Findlay or elsewhere. The court ruled that all evidence that has been offered that goes to the reputation elsewhere, than in the vicinity right here in Findlay, is ruled out and will not be considered, but that the
157 evidence that has been offered and admitted on this point that goes to the general reputation in the immediate vicinity here, will be retained, and the motion as to that part of the evidence is overruled; and that when the decision is rendered, the court will indicate clearly in the opinion, the decision as to these questions, as to whether evidence has been retained or not, to which ruling of the court defendants then and there excepted.)

Thereupon counsel on behalf of defendant, demurred to the evidence of the plaintiff, on the ground there is no proof, no evidence tending to prove that the husband of the plaintiff, at any time, lost or paid to any one any sum of money upon the premises of the defendant, which demurrer to the evidence the court overruled, to which ruling of the court defendants then and there excepted.

And the evidence of both sides being closed, both parties rested their cause, and the foregoing is all the evidence offered or introduced during the trial of said case.

Thereupon the court found the issues in favor of the plaintiff, and against said defendant, to which said finding of the court the defendant then and there excepted.

Whereupon, within three days, the defendant filed a motion for a new trial, upon the grounds and for the reasons therein stated, and moved the court to set aside its said findings and grant a new trial herein, which said motion the court overruled and refused, to which ruling of the court defendant then and there excepted.

158 Circuit Court, Hancock County, Ohio.

BELLE B. TROUT, Plaintiff,
vs.
WILLIAM MARVIN, Defendant. } No. 966.

Motion for New Trial.

Now comes the said defendant, William Marvin, and moves the court to set aside and vacate the decision and judgment by it herein rendered, and to grant to this defendant a new trial of this cause, for the reasons and upon the grounds following:

1. Because the said decision and judgment is contrary to the uncontroverted evidence in the case.
2. Because the said decision and judgment is contrary to law.
3. For error of law occurring during the trial of the cause, and at the time excepted to by this defendant, in this, among other things, to-wit: that the court erred in admitting testimony offered by plaintiff to sustain her case against the exceptions of said defendant.
4. Because the said decision and judgment is not sustained by the evidence submitted by the plaintiff in the case.
5. Because the statute under, by authority and in pursuance of which the said plaintiff brought her case is unconstitutional and in contravention of the constitution of the State of Ohio.

159 6. Because said action was at the time, and from the commencement thereof, barred by the statute of limitations.

WILLIAM MARVIN, *Defendant*,
By PHELPS & DAVID,
J. A. & E. V. BOPE, AND
ALFRED GRABER,
His Attorneys.

And thereupon the defendant causes this bill of exceptions to be filed with the clerk of the court of common pleas of Hancock county, Ohio, this — day of February, A. D., 1903; and thereupon counsel for plaintiff, in writing, indorsed their approval of the foregoing as being a correct bill of exceptions of the evidence produced at the trial; and the same being submitted to us, the undersigned judges who sat in the trial of this cause, we upon examination of said bill of exceptions, and being duly advised in the premises, find the same to be full, true and correct, and that it contains all the evidence ad-

duced at the trial, and we hereby allow and approve the same, and attach our signatures thereto, and at the request of the defendant it is ordered that the same be deposited with the papers in the case and made part of the record of the case.

So done and ordered this March 23rd, A. D. 1903.

R. M. VOORHEES,
W. H. DONAHUE,
Trial Judges.

Endorsed on cover: File No. 19,329. Ohio supreme court. Term No. 247. William Marvin, plaintiff in error, *vs.* Belle B. Trout. Filed May 7", 1904. File No. 19,329.

FILED

PLAINTIFF'S BRIEF

Supreme Court of the United States

OCTOBER TERM, 1904.

No. 246. 19.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

GEORGE F. PENDLETON,

Attorney for Plaintiff,

P. O. PERRYSBURG, OHIO.

(19,328)

Case No. 246, October Term, 1904.

UNITED STATES SUPREME COURT.

Statement of Case.

Belle B. Trout, the defendant in error, brought her action as a third person, against James Clifford, Jacob Gassman, and William Marvin to recover moneys alleged by her to have been gambled away by Frank H. Trout and won by the defendants. Her suit was predicated solely on the statute of Ohio to the effect that if the loser failed for six months to bring a suit to recover the money gambled away, "any person may sue for and recover the same, with costs of suit, against any winner as aforesaid, for the use of the person prosecuting the same." (Revised Statutes of Ohio, Sec. 4273). She recovered a judgment against the three defendants. Marvin was the owner of the real estate and Clifford and Gassman were his tenants who had leased the property for saloon purposes, and some of the upper rooms for sleeping purposes. Marvin lived in another part of the city but it was claimed that Clifford and Gassman in fact used the sleeping rooms for gambling purposes, and with Marvin's knowledge and permission.

Belle B. Trout recovered a judgment against all three defendants.

Afterward upon the petition in error of Marvin the Circuit Court of Hancock County reversed the judgment as to Marvin and affirmed the judgment as against Clifford and Gassman.

Thereupon Belle B. Trout dismissed Marvin out of the case.

The judgment against Clifford and Gassman not having been paid to her by them, she filed her petition in the nature of a bill in equity in the Court of Common Pleas of Hancock county, Ohio, alleging the recovery of the judgment against Clifford and Gassman, their failure to pay it, that Marvin knowingly permitted certain rooms on said property (describing the property) to be occupied by Clifford and Gassman for gaming purposes and that

Frank H. Trout had lost by such gaming with Clifford and Gassman the amount of money the judgment in her favor against Clifford and Gassman called for, to-wit: $3,473, and the costs of said suit against them, to-wit: $143.97. The prayer of the petition was that the Court of Common Pleas declare the said judgment against Clifford and Gassman a lien on said building and real estate of said Marvin, and that said real estate of said Marvin be sold to satisfy such judgment, the interest thereon and the costs. The action was in effect a foreclosure of sai l supposed lien upon said premises, and was claimed to be authorized by Sec. 4275 of the Revised Statutes of Ohio.

The Court of Common Pleas granted the prayer of the petition and ordered the sale of the said real estate of Marvin to satisfy said judgment against said Clifford and Gassman with interest and costs.

Said Marvin appealed the case to the Circuit Court of Hancock County, Ohio, and it was there tried on the merits upon the petition filed in the Common Pleas Court, and the answer of said Marvin thereto admitting the recovery of the judgment by Belle B. Trout against Clifford, Gassman and Marvin, the reversal as to Marvin, and that Marvin owned the premises, but denying all other allegations of the petition.

The demurrer to the petition was overruled in the Common Pleas Court, and was not passed upon by the Circuit Court.

The Circuit Court heard the evidence offered by said Belle B. Trout. The defendant William Marvin offered no evidence at such trial. He relied solely upon his supposed statutory and constitutional rights.

The Circuit Court found the facts and entered them upon its record; and from the facts found adjudged in favor of said Belle B. Trout and against said William Marvin to the full amount of said judgment, interest and costs, and also the costs of this suit to foreclose said alleged lien, to-wit, $5,082 debt and $143.97 costs of the suit in which judgment was so rendered against said Clifford and Gassman; and ordered the sale of the said real estate of said Marvin to satisfy the said judgment, interest and costs.

Said Marvin carried the case to the Supreme Court of Ohio upon his petition in error raising all the constitutional questions there which are urged here.

The Supreme Court of Ohio affirmed the judgment of the Circuit Court without report.

Marvin brings the cause into this court by proceedings in error seeking to reverse the said judgment against him.

The questions raised in this court are the same in substance as made in the Supreme Court of Ohio, and involve the validity of the three sections of the Ohio Statutes quoted below as they have been construed and enforced against said Marvin in this cause by said Ohio courts. Such construction being as claimed by the plaintiff in error a palpable invasion of his right of property as guaranteed to him by the constitution of his state and also by the supreme fundamental law of the land.

We quote the said Sections from Bates' Second Edition.

"Sec. 4270. (When and by whom money, "etc., lost at gaming may be recovered back.) If "any person, by playing at any game, or by "means of any bet or wager, loses to any other "person any sum of money or other thing of "value, and pays or delivers the same, or any "part thereof, to the winner, the person who so "loses and pays, or delivers may, at any time "within six months next after such loss and pay-"ment or delivery, sue for and recover the "money or thing of value so lost and paid or de-"livered, or any part thereof, from the winner "thereof, with costs of suit, by civil action "founded on this chapter, before any court of "competent jurisdiction."

"Sec. 4273. (When third party may sue.) "If the person losing such money or thing of "value as provided in section **forty-two hundred "and seventy** does not, within the time there-"in specified, without collusion or deceit, "sue and with effect prosecute, for the money or "thing of value so lost and paid or delivered, any "person may sue for and recover the same, with

"costs of suit, against any winner as aforesaid, "for the use of the person prosecuting the "same."

"Sec. 4275. (Liability of property for "fines and for losses occurring thereon). The "property, both real and personal, of a defend- "ant, against whom a judgment is rendered un- "der this chapter, either for fines, costs, or to "recover money, or other thing of value, lost or "paid, shall be liable therefor, without exemp- "tion, and such judgment shall be a lien there- "on until paid; if the owner of the building in "which the money was lost knowingly permits 'it to be used for gaming purposes, such build- "ing and the real estate upon which it stands, "shall be liable therefor in the same manner; "and the guardian or trustee of a minor, insane "person, or idiot, who permits any property "under his charge to be used for gaming pur- "poses, and the same becomes liable on account "thereof, shall be liable to his ward for the "amount thereof."

In the trial of the case the courts followed and applied the law as laid down in a somewhat similar case by the Supreme Court of Ohio in Binder vs. Finkbone, 25 Ohio St. 103, to the effect that when the loser in the game had recovered judgment against the winner who was tenant of the landlord, such judgment became a lien against the owner of the premises although he was not a party to the suit resulting in the judgment. And in that case the recovery was by the loser in the game, and not by a third party who lost nothing, which distinguishes the Marvin vs. Trout case. In that case also the statute being construed was different in terms from that above quoted.

The judgment was rendered before the Fourteenth Article in amendment of the Federal Constitution was adopted and made the law of the land by Congress and promulgated as such on July 28th, 1868.

Hence at that time the powers of the states were not restricted by said amendment as they now are.

In said case the Ohio Supreme Court held in the syl-

labus of the case that the record of the proceedings against the tenant gambler "is conclusive as to the following facts, to-wit: The recovery of the judgment; the "amount of money lost and paid by the plaintiff; that it "was lost at gaming, contrary to the act of March 12, "1831; and that the defendant was the winner of the "money so lost and paid."

The present case of Marvin vs. Trout was before the Supreme Court of Ohio at a former trial upon the demurrer to the petition, but no question as to the constitutionality of the proceedings was there raised or decided.

Trout vs. Marvin, 62 Ohio St. 132.

The ground upon which the court held the petition good is stated by Judge Minshall delivering the opinion at page 135 in these words:

> "So far as natural justice is concerned it has "little to do with a recovery under any of these "sections. The primary object of the legisla- "ture in their enactment was, not to do justice "between the parties. but in the interest of good "morals, to discourage the vice of gambling; and "it is quite as consistent with this policy to make "a judgment recovered by a third person under "section 4273, a lien on the property where the "gaming was carried on in which the money was "lost, as a judgment in favor of the loser under "section 4270 where, in either case, the gaming "was carried on with the knowledge of the "owner."

This is the view the Supreme Court of Ohio took of the case on the demurrer to the petition, which they refused to sustain and remanded the case for trial on the merits, resulting as shown by the record now here in this court in the order to sell Marvin's property to satisfy a judgment against Clifford and Gassman.

This case of Marvin vs. Trout was affirmed by the Ohio Supreme Court after the trial on the merits, but without any reported opinion.

Marvin vs. Trout 70 Ohio St. 437.

The case of Trout vs. Marvin 24 Ohio Circuit Court

Reports 333, is the opinion prepared by the three Circuit judges who heard the case on the merits. The specific errors of which we complain here will more clearly appear by reproducing Nos. 3 and 6 of the syllabi prepared by the court.

We quote:

"3. Reversal of judgment against prop-
"erty owner as winner, not res adjudicata as to
"lien on property for winnings.

"Where a judgment recovered against three
"persons, under Sec. 4273 Rev. Stat., for money
"won by them at gaming, is afterwards reversed
"as to one, the owner of the property, and af-
"firmed as to the other two the lessees, in an
"action afterwards brought, under Sec. 4275
"Rev. Stat., to make the judgment a lien on the
"property as to the one as to whom it was re-
"versed, the reversal of the judgment as to him
"cannot be pleaded as **res adjudicata** in the lat-
"ter action, the latter not being for the recovery
"of money won by the defendant, but to make a
"judgment therefor against others a lien on his
"property where with his knowledge, the gam-
"ing was conducted and the money won."

"6. Effect of judgment against winners, of
"what conclusive.

"In an action, under Sec. 4275 Rev. Stat.,
"against the owner of the premises wherein the
"gaming was carried on and the money won, to
"subject said premises to the payment of a judg-
"ment recovered against the winners, for dam-
"ages caused by such gaming, such judgment
"when not impeached for fraud or collusion, is
"conclusive as to the following facts:

"(1) That the money lost and winnings se-
"cured, which caused the plaintiff's injury, was
"won by the defendant in the judgment.

"(2) That the same were lost and won in
"violation of law; and

"(3) That the plaintiff, in consequence

"thereof, sustained damage to the amount of "the judgment."

We specify the errors here relied on as follows:

"1. The said findings, judgment and order of said Circuit Court of Ohio, and said judgments of affirmance of the Supreme Court of the State of Ohio violate in effect and results and are repugnant to Section One of Article Fourteen of the Amendments to the Constitution of the United States," in this, to-wit:

(a) Said Ohio courts erred in so construing said Sec. 4275 as to make said William Marvin liable to pay the money now claimed by Belle B. Trout without a judgment against him in any court of law; and thus depriving him of his right to a trial by jury.

(b) They likewise erred in holding that the judgment at law obtained by said Belle B. Trout against the gambling tenants, Clifford and Gassman, without a like judgment against said William Marvin, operated as a lien upon his said real estate within the provisions of said Sec. 4275, and to be declared and enforced as such lien by said Circuit Court of Ohio, sitting as a court of equity.

(c) Said Ohio courts erred in giving said judgment against said Clifford and Gassman a conclusive effect as against said Marvin after the same was reversed as to him, and he was dismissed out of the suit. Thereby depriving said Marvin of his day in court to contest the fact as to whether the sum of money claimed to be lost was in fact lost at gaming; whether the winnings of said Frank H. Trout did not in fact exceed his losses; whether the money was in fact won by said Clifford and Gassman, or by some other party; whether the actual transaction amounted to gambling in violation of law; and whether the judgment represented truthfully the actual amount lost at gaming.

(d) Said Ohio courts erred in holding that said Circuit Court sitting as a court of equity, and having no power to have a jury, had jurisdiction to try the question vital to said Marvin, whether he knowingly permitted his building to be used for gaming purposes. The Circuit Court found that he did. A jury might have found other-

wise. The petition did not tender a jury issue. We claim that all the Ohio courts erred in entertaining the action in a form that cut off the trial by jury.

Wherefore said William Marvin is being deprived of his said property "without due process of law."

2. Said sections 4273 and 4275 as so enforced in this suit by said Ohio courts operate so as to take Marvin's property away from him and give it to Belle B. Trout, not to restore to her any money coming to her, as she lost nothing, but because she volunteered to bring the suit as a third party by virtue of the statute. We claim that this is an invasion of the private right of property, and said Ohio courts erred in giving judgment in her favor as against said William Marvin.

3. The said proceedings of said Ohio courts herein complained of amount to an excessive use or abuse of the police power of the State of Ohio, and in effect confiscate the said property of said Marvin to the extent of the judgment, interest and costs for the private benefit of said Belle B. Trout. We claim that this is error; and an invasion of the fundamental law of the land.

Law of the Case.

On the part of plaintiff in error we predicate our whole claim to have a reversal of the judgment upon the original petition of Belle B. Trout; (Rec. 21-22); the answer of William Marvin; (Rec. 23); the finding of facts and of law by the Circuit Court, and its judgment thereon; (Rec. 32-35), the petition in error in the Supreme Court of Ohio; (Rec. 16-20); and its judgment of affirmance; (Rec. 12-13).

The facts in this case and the other between the same parties in the Supreme Court here are almost identical; and are entirely so in the law. They are unique, and peculiar to the Ohio statutes; and the decisions of the Ohio courts. So it may not be helpful to the court here for me to go outside of the Ohio courts.

We believe there is no other gaming case than Trout vs. Marvin, 62 Ohio St. 132; 70 Ohio St. 437; and Trout

vs. Marvin 24 Ohio Circuit Reports 333, where the question of a third party under the statute recovering against the owner of the premises has been considered.

And the above cited cases all involve this same controversy.

We concede that the decisions of the Supreme Court of Ohio both under the gaming laws above cited, and under the liquor laws so far as they have touched the points at issue here are against us on the question of the validity of the proceedings and of the statutes. The question whether the Fourteenth amendment is violated has seldom been before the Supreme Court, and we claim it has not been carefully considered in any gaming or liquor case.

We cite the following:

Binder vs. Finkbone 25 Ohio St. 103.
Mullen vs. Peck 49 Ohio St. 447.
Goodall vs. The Gerke Brewing Company 56 Ohio St. 257.
Goodman vs. Hailes 59 Ohio St. 342.
Hoss vs. Layton 3 Ohio St. 353.
Cooper vs. Rowley 29 Ohio St. 547.
Bellinger vs. Griffith 23 Ohio St. 619.

To declare a judgment against one man a lien on another's real estate seems to us, at least, a very dangerous innovation in the law.

The right of trial by jury is secured to the citizens by the Constitution and Statutes of Ohio.

"The right of trial by jury shall be inviolate."—Ohio Constitution of 1851, Article 1, Sec. 5.

Revised Statutes of Ohio Sec. 5130, which is as follows:

"Sec. 5130. (How issues are to be tried). "Issues of law must be tried by the court, unless "referred as hereinafter provided; and issues "of fact arising in actions for the recovery of "money only, or specific real or personal prop-"erty shall be tried by a jury, unless a jury trial "be waived, or a reference be ordered as herein-"after provided."

Hence the proceedings above mentioned that result in the taking of Marvin's real estate from him without the intervention of a jury are an invasion of his property rights as guaranteed and secured by the law and "without due process of law."

Police Power.

We further claim that the police power vested in the State of Ohio as a sovereign state to safeguard the morals of the people, and to discourage the vice of gambling must be exercised within the limitations of the Constitution, Federal and State. And that to so shape proceedings as to work a forfeiture or virtual confiscation of a man's real estate for the private benefit of a third person, or any third person who suffered no personal loss from the gambling complained of is not a valid exercise of such police power.

It violates the personal right of property of the individual, and invades his Constitutional right of property, and is tantamount to the taking of it away from him "without due process of law."

By the finding of fact (Rec. 33) paragraph 3, said Belle B. Trout is the wife of the gambler who lost the money at the gambling, but the right of action by said statute is not given to her as wife of the loser, for she would have had the same statutory right to recover if she had been the wife of any other gambler. Said Sec. 4273 gives the right to sue after six months to "any person."

Respectfully submitted,

GEO. F. PENDLETON,
Attorney for Plaintiff in Error.

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JAMES H. McKENNEY,
Clerk.

PLAINTIFF'S BRIEF.

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. ~~247~~ 20.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

GEORGE F. PENDLETON,
Attorney for Plaintiff.
P. O. FINDLAY, OHIO.

(19,329)

No. 247, October Term, 1904.

UNITED STATES SUPREME COURT.

Statement of Case.

Belle B. Trout, the defendant in error, brought her action as a third person against James Clifford and Jacob Gassman to recover moneys alleged by her to have been gambled away by Frank H. Trout and won by the defendants. Her suit was predicated solely on the statute of Ohio to the effect that if the loser failed for six months to bring a suit to recover the money gambled away, "any person may sue for and recover the same, with costs of suit, against any winner as aforesaid, for the use of the person prosecuting the same." (Revised Statutes of Ohio, Sec. 4273). She recovered a judgment against them. Marvin was the owner of the real estate and Clifford and Gassman were his tenants who had leased the property for saloon purposes. Marvin lived in another part of the city but it was claimed that Clifford and Gassman in fact used the sleeping rooms for gambling purposes, and with Marvin's knowledge and permission.

The judgment against Clifford and Gassman not having been paid to her by them, she filed her petition in the nature of a bill in equity in the Court of Common Pleas of Hancock County, Ohio, alleging the recovery of the judgment against Clifford and Gassman, their failure to pay it, that Marvin knowingly permitted certain rooms on said property, (describing the property), to be occupied by Clifford and Gassman for gaming purposes and that Frank H. Trout had lost by such gaming with Clifford and Gassman the amount of money the judgment in her favor against Clifford and Gassman called for, to-wit: $1,300 damages and the costs of suit, $11.23.

The prayer of the petition was that the Court of Common Pleas declare the said judgment against Clifford and Gassman a lien on said building and real estate of said Marvin, and that said real estate of said Marvin be sold to

satisfy said judgment, the interest thereon and the costs. The action was in effect a foreclosure of said supposed lien upon said premises, and was claimed to be authorized by Sec. 4275 of the Revised Statutes of Ohio.

The Court of Common Pleas granted the prayer of the petition and ordered the sale of the said real estate of Marvin to satisfy said judgment against said Clifford and Gassman with interest and costs.

Said Marvin appealed the case to the Circuit Court of Hancock County, Ohio, and it was there tried on the merits upon the petition filed in the Common Pleas Court and the answer of said Marvin thereto admitting the recovery of the judgment by Belle B. Trout against Clifford and Gassman, and that Marvin owned the property and a denial of the other allegations of the petition.

The Circuit Court heard the evidence offered by said Belle B. Trout. The defendant William Marvin offered no evidence at such trial. He relied solely upon his supposed statutory and constitutional rights.

The Circuit Court found the facts and entered them upon its record; and from the facts found adjudged in favor of said Belle B. Trout and against said William Marvin to the full amount of said judgment, interest and costs, and also the costs of this suit to foreclose said alleged lien, to-wit: $1794, debt, costs of said suit in which judgment was so rendered against said Clifford and Gassman; and ordered the sale of said real estate of said Marvin to satisfy the said judgment, interest and costs.

Said Marvin carried the case to the Supreme Court of Ohio upon his petition in error raising all the constitutional questions there which are urged here.

The Supreme Court of Ohio affirmed the judgment of the Circuit Court without report.

Marvin brings the cause into this court by proceedings in error seeking to reverse the said judgment against him.

The questions raised in this court are the same in substance as made in the Supreme Court of Ohio, and involve the validity of the three sections of the Ohio

Statutes quoted below as they have been construed and enforced against said Marvin in this cause by said Ohio courts. Such construction being as claimed by the plaintiff in error a palpable invasion of his right of property as guaranteed to him by the constitution of his state and also by the supreme fundamental law of the land.

We quote the said Sections from Bates' Second Edition.

"Sec. 4270. (When and by whom money, "etc., lost at gaming may be recovered back.) If "any person, by playing at any game, or by "means of any bet or wager, loses to any other "person any sum of money or other thing of "value, and pays or delivers the same, or any "part thereof, to the winner, the person who so "loses and pays, or delivers may, at any time "within six months next after such loss and pay-"ment or delivery, sue for and recover the "money or thing of value so lost and paid or de-"livered, or any part thereof, from the winner "thereof, with costs of suit, by civil action "founded on this chapter, before any court of "competent jurisdiction."

"Sec. 4273. (When third party may sue.) "If the person losing such money or thing of "value as provided in section **forty-two hundred "and seventy** does not, within the time there-"in specified, without collusion or deceit, "sue and with effect prosecute, for the money or "thing of value so lost and paid or delivered, any "person may sue for and recover the same, with "costs of suit, against any winner as aforesaid, "for the use of the person prosecuting the "same."

"Sec. 4275. (Liability of property for "fines and for losses occurring thereon). The "property, both real and personal, of a defend-"ant, against whom a judgment is rendered un-"der this chapter, either for fines, costs, or to "recover money, or other thing of value, lost or

"paid, shall be liable therefor, without exemp-
"tion, and such judgment shall be a lien there-
"on until paid; if the owner of the building in
"which the money was lost knowingly permits
'it to be used for gaming purposes, such build-
"ing and the real estate upon which it stands,
"shall be liable therefor in the same manner;
"and the guardian or trustee of a minor, insane
"person, or idiot, who permits any property
"under his charge to be used for gaming pur-
"poses, and the same becomes liable on account
"thereof, shall be liable to his ward for the
"amount thereof."

In the trial of the case the courts followed and applied the law as laid down in a somewhat similar case by the Supreme Court of Ohio in Binder vs. Finkbone, 25 Ohio St. 103, to the effect that when the loser in the game had recovered judgment against the winner who was tenant of the landlord, such judgment became a lien against the owner of the premises although he was not a party to the suit resulting in the judgment. And in that case the recovery was by the loser in the game, and not by a third party who lost nothing, which distinguishes the Marvin vs. Trout case. In that case also the statute being construed was different in terms from that above quoted.

The judgment was rendered before the Fourteenth Article in amendment of the Federal Constitution was adopted and made the law of the land by Congress and promulgated as such on July 28th, 1868.

Hence at that time the powers of the states were not restricted by said amendment as they now are.

In said case the Ohio Supreme Court held in the syllabus of the case that the record of the proceedings against the tenant gambler "is conclusive as to the fol-
"lowing facts, to-wit: The recovery of the judgment; the
"amount of money lost and paid by the plaintiff; that it

"was lost at gaming, contrary to the act of March 12, "1831; and that the defendant was the winner of the "money so lost and paid."

A case like the present case of Marvin vs. Trout was before the Supreme Court of Ohio at a former trial upon the demurrer to the petition, but no question as to the constitutionality of the proceedings was there raised or decided. Trout vs. Marvin, 62 Ohio St. 132.

Trout vs. Marvin, 62 Ohio St. 132.

The ground upon which the court held the petition good is stated by Judge Minshall delivering the opinion at page 135 in these words:

> "So far as natural justice is concerned it has "little to do with a recovery under any of these "sections. The primary object of the legisla- "ture in their enactment was, not to do justice "between the parties. but in the interest of good "morals, to discourage the vice of gambling; and "it is quite as consistent with this policy to make "a judgment recovered by a third person under "section 4273, a lien on the property where the "gaming was carried on in which the money was "lost, as a judgment in favor of the loser under "section 4270 where, in either case, the gaming "was carried on with the knowledge of the "owner."

This is the view the Supreme Court of Ohio took of the case on the demurrer to the petition, which they refused to sustain and remanded the case for trial on the merits, resulting as shown by the record now here in this court in the order to sell Marvin's property to satisfy a judgment against Clifford and Gassman.

This case of Marvin vs. Trout was affirmed by the Ohio Supreme Court after the trial on the merits, but without any reported opinion.

Marvin vs. Trout 70 Ohio St. 437.

The case of Trout vs. Marvin 24 Ohio Circuit Court

Reports 333, is the opinion prepared by the three Circuit judges who heard the case on the merits. The specific errors of which we complain here will more clearly appear by reproducing Nos. 3 and 6 of the syllabi prepared by the court.

We quote:

"3. Reversal of judgment against prop-
"erty owner as winner, not res adjudicata as to
"lien on property for winnings.

"Where a judgment recovered against three
"persons, under Sec. 4273 Rev. Stat., for money
"won by them at gaming, is afterwards reversed
"as to one, the owner of the property, and af-
"firmed as to the other two the lessees, in an
"action afterwards brought, under Sec. 4275
"Rev. Stat., to make the judgment a lien on the
"property as to the one as to whom it was re-
"versed, the reversal of the judgment as to him
"cannot be pleaded as **res adjudicata** in the lat-
"ter action, the latter not being for the recovery
"of money won by the defendant, but to make a
"judgment therefor against others a lien on his
"property where with his knowledge, the gam-
"ing was conducted and the money won."

"6. Effect of judgment against winners, of
"what conclusive.

"In an action, under Sec. 4275 Rev. Stat.,
"against the owner of the premises wherein the
"gaming was carried on and the money won, to
"subject said premises to the payment of a judg-
"ment recovered against the winners, for dam-
"ages caused by such gaming, such judgment
"when not impeached for fraud or collusion, is
"conclusive as to the following facts:

"(1) That the money lost and winnings se-
"cured, which caused the plaintiff's injury, was
"won by the defendant in the judgment.

"(2) That the same were lost and won in
"violation of law; and

"(3) That the plaintiff, in consequence

"thereof, sustained damage to the amount of "the judgment."

We specify the errors here relied on as follows:

"1. The said findings, judgment and order of said Circuit Court of Ohio, and said judgments of affirmance of the Supreme Court of the State of Ohio violate in c[illegible] and results and are repugnant to Section One of Article Fourteen of the Amendments to the Constitution of the United States," in this, to-wit:

(a) Said Ohio courts erred in so construing said Sec. 4275 as to make said William Marvin liable to pay the money now claimed by Belle B. Trout without a judgment against him in any court of law; and thus depriving him of his right to a trial by jury.

(b) They likewise erred in holding that the judgment at law obtained by said Belle B. Trout against the gambling tenants, Clifford and Gassman, without a like judgment against said William Marvin, operated as a lien upon his said real estate within the provisions of said Sec. 4275, and to be declared and enforced as such lien by said Circuit Court of Ohio, sitting as a court of equity.

(c) Said Ohio courts erred in giving said judgment against said Clifford and Gassman a conclusive effect as against said Marvin after the same was reversed as to him, and he was dismissed out of the suit. Thereby depriving said Marvin of his day in court to contest the fact as to whether the sum of money claimed to be lost was in fact lost at gaming; whether the winnings of said Frank H. Trout did not in fact exceed his losses; whether the money was in fact won by said Clifford and Gassman, or by some other party; whether the actual transaction amounted to gambling in violation of law; and whether the judgment represented truthfully the actual amount lost at gaming.

(d) Said Ohio courts erred in holding that said Circuit Court sitting as a court of equity, and having no power to have a jury, had jurisdiction to try the question vital to said Marvin, whether he knowingly permitted his building to be used for gaming purposes. The Circuit Court found that he did. A jury might have found other-

wise. The petition did not tender a jury issue. We claim that all the Ohio courts erred in entertaining the action in a form that cut off the trial by jury.

Wherefore said William Marvin is being deprived of his said property "without due process of law."

2. Said sections 4273 and 4275 as so enforced in this suit by said Ohio courts operate so as to take Marvin's property away from him and give it to Belle B. Trout, not to restore to her any money coming to her, as she lost nothing, but because she volunteered to bring the suit as a third party by virtue of the statute. We claim that this is an invasion of the private right of property, and said Ohio courts erred in giving judgment in her favor as against said William Marvin.

3. The said proceedings of said Ohio courts herein complained of amount to an excessive use or abuse of the police power of the State of Ohio, and in effect confiscate the said property of said Marvin to the extent of the judgment, interest and costs for the private benefit of said Belle B. Trout. We claim that this is error; and an invasion of the fundamental law of the land.

Law of the Case.

On the part of plaintiff in error we predicate our whole claim to have a reversal of the judgment upon the original petition of Belle B. Trout; (Rec. 21-22); the answer of William Marvin; (Rec. 23); the finding of facts and of law by the Circuit Court, and its judgment thereon; (Rec. 32-34), the petition in error in the Supreme Court of Ohio; (Rec. 16-20); and its judgment of affirmance; (Rec. 12-13).

The facts in this case and the other between the same parties in the Supreme Court here are almost identical; and are entirely so in the law. They are unique, and peculiar to the Ohio statutes; and the decisions of the Ohio courts. So it may not be helpful to the court here for me to go outside of the Ohio courts.

We believe there is no other gaming case than Trout vs. Marvin, 62 Ohio St. 132; 70 Ohio St. 437; and Trout

vs. Marvin 24 Ohio Circuit Reports 333, where the question of a third party under the statute recovering against the owner of the premises has been considered.

And the above cited cases all involve this same controversy.

We concede that the decisions of the Supreme Court of Ohio both under the gaming laws above cited, and under the liquor laws so far as they have touched the points at issue here are against us on the question of the validity of the proceedings and of the statutes. The question whether the Fourteenth amendment is violated has seldom been before the Supreme Court, and we claim it has not been carefully considered in any gaming or liquor case.

We cite the following:

Binder vs. Finkbone 25 Ohio St. 103.
Mullen vs. Peck 49 Ohio St. 447.
Goodall vs. The Gerke Brewing Company 56 Ohio St. 257.
Goodman vs. Hailes 59 Ohio St. 342.
Hoss vs. Layton 3 Ohio St. 353.
Cooper vs. Rowley 29 Ohio St. 547.
Bellinger vs. Griffith 23 Ohio St. 619.

To declare a judgment against one man a lien on another's real estate seems to us, at least, a very dangerous innovation in the law.

The right of trial by jury is secured to the citizens by the Constitution and Statutes of Ohio.

"The right of trial by jury shall be inviolate."—Ohio Constitution of 1851, Article 1, Sec. 5.

Revised Statutes of Ohio Sec. 5130, which is as follows:

"Sec. 5130. (How issues are to be tried). "Issues of law must be tried by the court, unless "referred as hereinafter provided; and issues "of fact arising in actions for the recovery of "money only, or specific real or personal prop-"erty shall be tried by a jury, unless a jury trial "be waived, or a reference be ordered as herein-"after provided."

Hence the proceedings above mentioned that result in the taking of Marvin's real estate from him without the intervention of a jury are an invasion of his property rights as guaranteed and secured by the law and "without due process of law."

Police Power.

We further claim that the police power vested in the State of Ohio as a sovereign state to safeguard the morals of the people, and to discourage the vice of gambling must be exercised within the limitations of the Constitution, Federal and State. And that to so shape proceedings as to work a forfeiture or virtual confiscation of a man's real estate for the private benefit of a third person, or any third person who suffered no personal loss from the gambling complained of is not a valid exercise of such police power.

It violates the personal right of property of the individual, and invades his Constitutional right of property, and is tantamount to the taking of it away from him "without due process of law."

By the finding of fact (Rec. 32) paragraph 3, said Belle B. Trout is the wife of the gambler who lost the money at the gambling, but the right of action by said statute is not given to her as wife of the loser, for she would have had the same statutory right to recover if she had been the wife of any other gambler. Said Sec. 4273 gives the right to sue after six months to "any person."

Respectfully submitted,

GEO. F. PENDLETON,
Attorney for Plaintiff in Error.

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Supreme Court U. S.
FILED
OCT 10 1905
JAMES H. MCKENNEY,
Clerk.

PLAINTIFF'S ADDITIONAL BRIEF.

Supreme Court *of the* United States,

OCTOBER TERM, 1905.

Nos. 19 and 20.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

VS.

BELLE B. TROUT, DEFENDANT IN ERROR.

ALSO

WILLIAM MARVIN, PLAINTIFF IN ERROR,

VS.

BELLE B. TROUT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

Further Statement of Case.

The Plaintiff in Error has prepared and filed this additional Brief in order to more clearly set forth his contention.

We include both cases because they are between the same parties, and involve the same application of the law; and the defendant in her printed brief filed in the case has put both cases in the one brief, and has practically treated the cases as one.

Hence in this Additional Brief we treat both cases as one.

The cases are fully stated in Plaintiff's seperate Briefs heretofore filed herein: and are also stated in defendant's Brief by Mr. Poe.

The actions are founded upon the statutes of Ohio, Title v. Chapter 5 on the subject of "Gaming", and the civil remedies as to the same.

Plaintiff quotes in his Brief, at pages 3 and 4 the sections of these statutes upon which the rights of the parties here rest; to-wit, Sections 4270, 4273, 4275.

The defendant, in her Brief at page 2 quotes said sections 4273 and 4275. Her quotations are accurate except the word "therefore" as it is given twice from section 4275 should be "therefor," the word used in the statute.

In order to apply the law to the points arising in this court, we will give a brief outline of the situation anew.

The plaintiff here, William Marvin, owned, and still owns, (subject to what this court may do with him), the ground described in Mrs. Trout's petition, (Rec. 21), and the three story brick building covering said ground, with many different tenants occupying parts thereof.

On January 1st, 1890, he leased by written lease duly executed for the term of five years from that date to Clifford and Gassman, the lower room known as the Cafe Royal, to be used as "restaurant and saloon" with the restrictive clause, that "if any liquors are sold in said room they must not sell to minors or persons known to get drunk", and rooms 19, 20, 21, 22, and 23, "to be used as sleeping rooms."

This lease covered the whole of the gambling periods set forth in the papers in the case; and is the lease referred to in the finding of facts. (Rec. p. 33 finding 2.) And was the only part of the building that Clifford and Gassman had anything to do with.

Said Belle B. Trout sued said Clifford and Gassman, and said Marvin, in an action at law based upon said section 4273 for $8,000 claimed to have been lost by Frank H. Trout, by gambling with said Clifford and Gassman, and Marvin. (Petition Rec. 52). Belle B. Trout got a verdict for $3473 (Rec. 57.) And judgment was entered by the Court upon the verdict. (Rec. 58). This judgment was reversed by the circuit court on error as to Marvin, and affirmed as to Clifford and Gassman. (Rec. 55; 59)

The suit was brought by Belle B. Trout.

Frank H. Trout, the gambler refused to bring the action to recover the money said to have been gambled away by him. His right of

action was given by said section 4270 of the statutes. The right was limited to six months.

After the expiration of six months Belle B. Trout brought an action to recover the money to her own use. As a mere volunteer she could do so, if the statute is valid.

We here again quote this section 4270.

And also Sec. 4273 upon which she founds her right of action.

Statutes.

"Sec. 4270. [When and by whom money, etc., lost at gaming may be recovered back.] If any person, by playing at any game, or by means of any bet or wager, loses to any other person any sum of money or other thing of value, and pays or delivers the same, or any part thereof, to the winner, the person who so loses and pays, or delivers may, at any time within six months next after such loss and payment or delivery, sue for and recover the money or thing of value so lost and paid or delivered, or any part thereof, from the winner thereof, with costs of suit, by civil action founded on this chapter, before any court of competent jurisdiction."

"Sec. 4273. [When third party may sue.] If the person losing such money or thing of value as provided in section forty two hundred and seventy does not, within the time therein specified, without collusion or deceit, sue and with effect prosecute, for the money or thing of value so lost and paid or delivered, any person may sue for and recover the same, with costs of suit, against any winner as aforesaid, for the use of the person prosecuting the same."

Belle B. Trout therefore brought this action, and had judgment against Clifford and Gassman, not as the wife of the losing gambler nor because of any injury to her, or her estate. The statute gives the right to sue and recover to "any person" who may bring the action; and this without regard to relationship to the losing gambler, or business relation as creditor, or otherwise.

The statute attempts to vest the **title** to the money lost in **any person** who may after six months bring the suit. Any stranger may volunteer to bring the suit, and recover from the holder of the money, regardless of character, or standing, or whether a tramp or vagabond.

"Any person", covers a wide sweep as to who may claim and recover. Under this **"any person"** clause of the statute Belle B. Trout voluntered to bring suit, and no doubt the state-

ment in the petition that she was the wife of the gambler who lost the money, was designed to, and did have weight with the jury, although **mere surplusage** in the petition.

It is conceded that the judgment was reversed as to Marvin, and later the plaintiff dismissed him out of the case. (Rec. 55, 59.)

In the second case Marvin was dismissed out of the case before trial, and the verdict of the jury, and the judgment of the court was in favor of said Belle B. Trout and against said Clifford and Gassman for $1,300 and costs.

At the end of these actions at law, Belle B. Trout was the judgment creditor, and Clifford and Gassman were the judgment debtors.

William Marvin was not a party to either of the judgments, and was in nowise in privity thereto, or with any of the parties.

Said Belle B. Trout not having been able to collect her said judgments, raised the claim that the real estate of William Marvin was liable to be charged in equity with the payment of the same, if she could prove that the gambling was done in his said rooms so leased to Clifford and Gassman as sleeping rooms, and that he knowingly permitted such rooms to be so used for gambling purposes.

She therefore filed her two petitions on the equity side of the court of common pleas of Hancock County, Ohio, it being a court having jurisdiction in both law and equity. The object and prayer of the petitions was that the court declare said judgments against said Clifford and Gassman to be a lien on the premises and building of said William Marvin, and that the premises be sold to satisfy said alleged lien. (Rec. 21).

The common pleas court having declared such lien and ordered a sale of the premises to satisfy the same, Marvin appealed the cases to the circuit court and there a trial was had by such court sitting as a court of equity. That court made a finding of facts, and adjudged the equities against said Marvin, and ordered his real estate to be sold to satisfy the alleged liens arising upon said judgments against Clifford and Gassman.

The Supreme Court of Ohio affirmed said judgments of the circuit court.

In the application of the law to the cases the Ohio Courts made the judgments against Clifford and Gassman conclusive against William Marvin.

The statute of Ohio thus construed by the Ohio courts to make a judgment against the tenants to be a lien on the real estate of the landlord; and to give the judgment conclusive effect as against the landlord, although not a party thereto, is part of said Chapter 5 from which we have above quoted sections 4270 and 4273, and is as follows:

Statute Sec. 4275.

"Sec. 4275. [Liability of property for fines and for losses occuring thereon.] The property, both real and personal, of a defendant, against whom a judgment is rendered under this chapter, either for fines, costs, or to recover money, or other thing of value, lost or paid, shall be liable therefor, without exemption, and such judgment shall be a lien thereon until paid; if the owner of the building in which the money was lost knowingly permits it to be used for gaming purposes, such building, and the real estate upon which it stands, shall be liable therefor in the same manner; and the guardian or trustee of a minor, insane person, or idiot, who permits any property under his charge to be used for gaming purposes, and the same becomes liable on account thereof, shall be liable to his ward for the amount thereof."

Mr. Poe claims in his brief, page 11, that this section has been substantially the law in Ohio for thirty eight years.

At pages 9 and 10 he quotes the old law, and at page 10 he observes and claims "This section makes the judgment a lien on the property where the gambling was done."

And again on page 10 he further says: "in both which enactments the judgment against the winner is made a lien on the real estate of a third party where the gambling was done with the knowledge of the owner."

We concede that this is the construction put upon the old section by the supreme court of Ohio in Binder v. Finkbone 25 Ohio St. Rep. 103. In the syllabus the court calls the judgment against the winner, (who was not a party to the judgment) "the statutory lien of the judgment, as declared by section 14."

We concede further that when the present case of Marvin v. Trout was before the supreme court of Ohio on demurrer to the petition, 62 Ohio St. 132, as appears from the syllabus, it put the same construction upon said new section 4275.

And we concede further, that the circuit court of Hancock County, which tried both cases of Trout v. Marvin upon the merits, being the same cases now here, applied the same construction to said section 4275.

Trout v. Marvin 24 Ohio Circuit Court Rep. 333.

In the application of the law of Ohio, in these cases, it will be observed that the courts gave the judgment against the winner a conclusive effect against the property owner who was not a party to the judgment.

Binder v. Finkbone 25 Ohio St. 103, 112.
Trout v. Marvin 24 Ohio Circuit Rep. 333.
Affirmed 70 Ohio St. 437.

We believe that the two cases of Marvin v. Trout here for review on writs of error to the Supreme Court of Ohio, are the only cases reported in Ohio where a third person, a volunteer, sued the winning gambler and recovered a judgment at law against him for money claimed to have been gambled away by a third person to the judgment; and the only cases where the judgment has been held to bind the real estate of one not a party to the judgment; and we believe they are the only Ohio cases under these statutes holding that the judgment against the winning gambler is conclusive against the owner of the property, who is not a party to such judgment.

Our principal contention here in this Court arises upon this peculiar construction of said sections 4270, 4273 and 4275 by the Ohio courts, and the conclusive effect given them against Mr. Marvin, and his real estate affected thereby.

The legal questions arising upon the merits may be put in this form.

1. Can a volunteer, a third party to the gambling, and who lost nothing by it lawfully recover from the winning gambler a judgment for the alleged losses of the losing gambler who refuses to prosecute?

2. Can such judgment in favor of such third party and against such gambler lawfully operate as a statutory lien to bind the property of the owner of the real estate upon which the gambling was done, such owner being neither a party to the gambling nor to the judgment?

3. Can such judgment in favor of such third party lawfully be held to conclude the owner of the real estate, who is not a party thereto?

The first proposition involves the right of the legislature, and the courts, to take the private property of one person and give it to another. As often as the question has been made in other cases the right has been denied. We cite only a few of the authorities.

Railroad Company v. Keith 67 Ohio St. 279, 292, 293.
Bowman v. Middleton I Bay 282.
Cooley Const. Lim. 6th Ed. page 198.
Taylor v. Commissioners of Ross County 23 Ohio St. 22; 84.

In Railroad Company v. Keith, *supra*, the supreme court of Ohio held as stated in the syllabus that certain sections of the statutes are in conflict with sections 16 and 19 of article I of the state constitution and are void "for the reason that they attempt to authorize the taking of private property for private purposes, and without due course of law."

In Taylor v. Commissioners of Ross County, *supra*, at page 84 White C. J., delivering the opinion of the Court uses the following language:

"Private property, except when taken for public purposes, or by legitimate taxation, is as inviolable as personal liberty. If an act of the legislature should authorize a magistrate, for such cause as he might see proper, to order the arrest and imprisonment of a citizen, the act could not be upheld upon the ground that it was to be presumed the magistrate would exercise the authority only for legal and constitutional causes of arrest. The authority in the case supposed would be entire, and the act wholly void."

In Railroad Co. v. Keith, *supra*, Burket, C. J., in speaking of the police power of the State of Ohio as to the taking of private property for private use, at pages 292-293 uses this strong language in the opinion:

"It is urged by counsel for defendant in error that the sections in question are enacted under the police power, and do no more than to require the railroad company to so use its property as not to injure that of another, and cite Cooley Const. Lim., star page 573. While the general assembly under the police power may restrict and regulate the conduct of persons, and the use of property, within reasonable bounds, it must do so under the limitations of the constitution, and cannot, under the guise of that power, take the private property of one person and bestow it upon another for his private use and benefit."

In Cooley on Const. Lim. (6th Ed.) it is said at page 198:

"The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred."

And further on the same page:

"We know of no case in which a legislative act to transfer the property of A. to B. without his consent has ever been held a constitutional exercise of legislative power in any state in the Union. On the contrary, it has been constantly resisted, as inconsistent with just principles, by every judicial tribunal in which it has been attempted to be enforced."

Taking into view the fact that Frank H. Trout was the absolute owner of the money he gambled away to Clifford and Gassman, and that by the common law it became theirs because of his delivery of it to them, and that his only right to recover it of them depended upon the statute to be exercised within six months, and that his failure to exercise his statutory right at all was tanta-

mount to passing title to them absolutely, as much so as if he had made a gift to them of the same, it would seem that the absolute title vested in them at the time Belle B. Trout began her suit against them. This being the case the legislative act that would transfer title to her, with the right of action to recover, is void.

In Kahn Jr. v. Walton 46 Ohio St. at page 210 Judge Williams in delivering the opinion said:

"It is true that particular statutes have been, from time to time, enacted in this state as well as in many of our sister states, which are, to some extent, in contravention to this common law doctrine. The statutes of this state, which allow money won by gaming or betting to be recovered back by the loser, furnish an example of this kind. But such statutes are a recognition of the established rule that no recovery could be had in such cases at common law; and therefore are to be construed strictly, and not extended by implication beyond the particular cases of illegality for which they provide.

The statutes adverted to, change the common law so far as to give the loser the right to recover back what he has lost, and provide a remedy therefor, but no farther."

Upon the second question above mooted: **"Can such judgment in favor of such third party and against such gambler lawfully operate as a statutory lien to bind the property of the owner of the real estate upon which the gambling was done, such owner being neither a party to the gambling nor to the judgment,"** the Ohio Courts have run wild.

Binder v. Finkbone 25 Ohio St. 103, 113.

McIlvane C. J. delivered the opinion of the court, and the doctrine of the opinion is such an innovation, and invasion of well settled constitutional rights of property holders, that we quote from it at length.

(Page 113) "It is also objected that the case made in the petition is not of equity cognizance; that the lien sought to be enforced, if it exist, is purely statutory; and if it does not exist, cannot be created or declared by a court of equity; that courts of equity will not aid the enforcement of penalties or forfeitures.

Judgment liens can be enforced ordinarily by executions at law; and where an adequate remedy exists at law, courts of equity will not lend their aid. But this rule cannot apply in this case. Admitting that the judgment in favor of plaintiff against Sawyer, is a lien on the real estate of Binder, between whom and Sawyer there is no privity of estate, it is difficult to see how the lien could be enforced by ordinary execution. It appears, therefore, that if the plaintiff is entitled to any remedy at all, it must be by action, and not by execution.

Let it be conceded that if the judgment against Sawyer is a lien on the real estate of Binder, such lien exists solely by force of the statute, and if there be no such lien by force and operation of the statute, a court of equity cannot create or declare a lien in favor of the judgment.

There can be no doubt, however, that the legislature may, in the exercise of its general police powers, prospectively declare a lien in favor of a judgment, as it has undertaken to do by this statute, on property used with the knowledge and consent of the owner, to the injury of another, or of the state, although the judgment for such injury be rendered only against those who were wrong-doers jointly with the owner.

But granting the existence of such power in the legislature, it does not follow that the owner can be deprived of his property by an execution, without a day in court. Not that he can be heard to deny the power of the legislature to declare the lien of the judgment in such case; but that he may deny his participation in the wrongful use of his property—a fact essential to the existence of a lien, and which cannot be judicially determined against him, in his absence, and without opportunity of being heard. The right of the owner, however, to have his day in court, does not affect the existence or validity of the lien created by the statute.

For, when the participation of the owner in the wrong is thus judicially ascertained, no new lien is declared; but the lien of the statute continues, as it existed from the date of the judgment.

The question, therefore, resolves itself thus: Courts must take cognizance of such case, and upon finding the conditions named in the statute against the owner of the real estate, enforce the lien; or else the statute, which declares the lien, becomes substantialy, if not wholly, nugatory.

The latter alternative should not be adopted unless it be clear the former cannot be maintained. The action thus instituted, not being for the purpose of creating a lien and thereby enforcing a penalty or forfeiture, but for the purpose of identifying the property upon which the lien already existed, and for the purpose of ascertaining judicially, as against the owner, the existence of the facts upon which the statute declares the lien, we see no serious objection to the jurisdiction of the court in such action. By declaring the lien, the legislature evidently intended to give the right to enforce it; and as it can only be enforced by action, it was certainly intended that a right of action should also accrue to the judgment creditor. And as the kind of action was not desig-

nated by the statute, nor the court in which it should be prosecuted, section 605 of the code applies, which provides, "that where the statute gives an action, but does not designate the kind of action, such action shall be held to be the civil action of the code."

The gambler who lost the money recovered a judgment at law against the winning gambler for the money lost, and failing to collect the judgment, brought his action to enforce his supposed lien against the owner of the real estate, and succeeded. The case was decided upon the demurrer to the petition.

The first case here, Marvin, v. Trout was twice before the Supreme Court of Ohio.

Trout v. Marvin 62 Ohio St. 132. (Reported.)
Marvin v. Trout 70 Ohio St. 437. (Unreported.)

The first trial was on demurrer to the petition, which demurrer the lower Ohio courts had sustained; but the Supreme Court held the demurrer not well taken and reversed the lower courts.

The petition is the same now here. Rec. 21-22.

Judge Minshall, in delivering the opinion of the court, (62 Ohio St. 135) apparently adheres to the doctrine of said case of Binder v. Finkbone, although he cites no authorities. He says:

"Doubtless the judgment in the former suit against all three of them was reversed as to Marvin, for the reason, that, in the opinion of the circuit court, there was not sufficient evidence to make him liable as a winner. This, however, does not affect the question as to whether his property may not be made liable to the lien of the judgmnnt rendered against Clifford and Gassman, should it be made to appear, as is averred, that the gaming in which the money was lost, was carried on in his property with his knowledge. Such is the purpose and object of this action, and it is not affected by the judgment rendered in his favor in the former action."

In the trials of the cases in the circuit court of Hancock county on merits the same view of the law was enforced against Mr. Marvin.

Trout v. Marvin 24 Ohio Circuit Court Rep. 333.

We contend that this construction put upon said section 4275 is wrong.

It makes the lien of a judgment against one party, operate as a burden upon another and different party, and to bind his estate. We contend that a legislative lien, so called, or a lien resulting from a judgment cannot bind the real estate of another person who is neither party nor privy to such judgment. A lien, to be a lien must be an incumbrance upon the title. To hold that the judgment will even operate to cloud the title of a stranger to it, is the taking of property from him without due process of law, and violates the constitutions, Federal and State.

We contend that the rule established by these Ohio cases and applied as against Mr. Marvin in his cases making the judgment against the winning gamblers **conclusive against him,** and that precluded him from defending on the merits as to every fact entering into his supposed liability, is a most palpable invasion of his constitutional rights.

This rule is set forth in the syllabus in Binder v. Finkbone, *supra*, (25 Ohio St. 103), and is stated in these words:

"2 The record of the proceedings in the first named action is conclusive as to the following facts, to-wit: The recovery of the judgment; the amount of money lost and paid by the plaintiff; that it was lost at gaming, contrary to the act of March 12, 1831; and that the defendant was the winner of the money so lost and paid."

Judge McIlvane in his opinion at page 112 says:

"In this case, we think the record of the judgment against Sawyer concludes Binder as to the fact that the judgment was rendered, and as to the amount of the judgment, and as to the cause of action upon which it was rendered."

In the trials in the circuit court of Hancock County, Ohio, this rule was followed and applied to preclude Mr. Marvin from making full defense; in fact the application of the rule as the law of the case cut off all defense that could have been made by him.

Trout v. Marvin 24 Circuit Court Rep. 333, 340.

In the syllabus page 333 we find these words:

"6. **Effect of Judgment against Winners, of what Conclusive.**

In an action, under Sec. 4275 Rev. Stat., against the owner of the premises wherein the gaming was carried on and the money won, to subject said premises to the payment of a judgment recovered against the winners, for damages caused by such gaming, such judgment, when not impeached for fraud or collusion, is conclusive as to the following facts:

(1.) That the money lost and winnings secured, which caused the plaintiff's injury, was won by the defendant in the judgment.

(2.) That the same were lost and won in violation of law.

(3) That the plaintiff, in consequence thereof, sustained damage to the amount of the judgment."

It is difficult to discern why one rule of evidence should be meted out to the winning gambler who actually pocketed the winnings, if any, and a more strenuous and illiberal rule applied to take the property of the owner from him because of his alleged knowledge and consent to have the gambling done in his rooms.

Why should the winning gambler be given his full day in court, in his action at law, with the right to jury trial, and to require full proof of every fact that made up the case against him examined and considered by the court, and jury, before a verdict could be given against him? Why should the winning gambler be accorded the right in such trial to have his own witnesses produced and heard upon every vital point in the case before he is to be mulct in damages and made to disgorge?

Why should these judicial privileges, and safeguards be accorded the active and aggressive transgressor of the law, and the less culpable real estate owner be **denied these privileges in defense of his lands and houses? Why should not the property owner also have his full day in a like court of law?** Why should not he be permitted to show that no money in fact was lost; that the winnings of complaining gambler in fact exceeded his losses; that any money lost in the game had in fact been restored before suit begun; that the money was

not in fact won by the person alleged in the petition; that no game was in fact played on the premises that violated the law; that the money had been passed over as a gift to the other party instead of being gambled away; and that the plaintiff had no claim upon the money except the right to sue for it given by the statute?

Why should the property owner be concluded and deprived of his legal and constitutional right to his full day also in a court of law and to lay his defenses before a jury of his peers?

We claim that the construction given to said section 4275 that leads to such results violates the constutional safeguards set forth in our assignment of errors. Rec. 4-6.

The judgment obtained by Belle B. Trout against Clifford and Gassman, when read in evidence in the suit of Belle B. Trout against William Marvin should have had no effect whatever to deprive him of making as full defense as was made, or might have been made in the original case by the winning gamblers in their defense, if it can be presumed that they ever made any *bona fide* defense at all.

And in this view of the cases we contend that the petitions against William Marvin set forth no causes of action, and the demurrers thereto sustained by the lower courts ought also to have been sustained by the supreme court of Ohio.

The making of this judgment conclusive violated Mr. Marvin's right of property under the constitutions.

> 2 Tiedeman, State and Federal Control of Persons and Property Sec. 178, page 871, and authorities there cited.

We quote from the text at page 871:

"But a statute cannot preclude the right to a judicial examination into the facts of a case, by making a certain set of circumstances conclusive evidence of the existence of the right of the plaintiff to recover or be nonsuited. Except in the case of estoppel, where a man is denied the right to question the truth of his

representations which he has made falslely to another's hurt, there can be no pre-judgment of one's rights by the creation of conclusive presumptions."

In the note the cases cited are:

"Tift v. Griffin, 5 Ga. 185; Little Rock, etc., R. R. Co. v. Payne, 33 Ark. 816 (34 Am. Rep. 55); Abbott v. Lindenbower, 42 Mo. 162; s. c. 46 Mo. 291; Young v. Beardsley, 11 Paige 93; East Kingston v. Towle, 48 N. H. 57 (2 Am. Rep. 174); Allen v. Armstrong, 16 Iowa, 508; Conway v. Cable, 37 Ill. 82; White v. Flinn, 23 Ind. 46; Groesbeck v. Seeley, 13 Mich. 329; Lenz v. Charlton, 23 Wis. 478; Taylor v. Miles, 5 Kan. 498 (7. Am. Rep. 558); Wright v. Cradlebaugh, 3 Nev. 341.

In the case last cited the court say:

"We apprehend that it is beyond the power of the legislature to restrain a defendant in any suit from setting up a good defense to an action against him. The legislature could not directly take the property of A. to pay the taxes of B. Neither can it indirectly do so by depriving A. of the right of setting up in his answer that his separate property has been jointly assessed with that of B., and asserting his right to pay his own taxes without being incumbered with those of B. - - Due process of law not only requires that a party shall be properly brought into court, but that he shall have the opportunity, when in court to establish any fact which, according to the usages of common law, or the provisions of the constitution, would be a protection to him or his property."

In said case of Little Rock, Etc., R. R. Co. v. Payne, 33 Ark. 816, as appears in the report thereof 34 Am. Rep. Judge Eakin at page 57 in delivering the opinion says:

"It is not within the province of the legislature to divest rights by prescribing to the courts what should be conclusive evidence. This matter was fully considered by this court in the case of Cairo & Fulton R. R. Co. v. Parks 32 Ark. 131, which arose under a statute, which endeavored to make a county clerk's deed of lands, sold for taxes, conclusive of its recitals, against the true owner. Justice Walker, in delivering the opinion, remarked: 'The legislature may declare what shall be received as evidence, but it cannot make that conclusively true which may be shown to be false; at all events, if such facts are necessary to show that the substantial rights of property are to be affected, and he is made to lose his property.'"

In said case of East Kingston v. Towle, 48 N. H. 57, Perley C. J. (2 Am. Rep. p. 176), said:

"Is this act, so far as it undertakes to make the owner of a dog absolutely liable for the amount of damage paid by the selectmen, without opportunity to be heard on the question, within the general scope of legislative authority delegated by the constitution to the general court?

"The general court is the legislative department of the state government, and has, under the constitution, an ample grant of legislative power; the extent of the power, is, however, limited, not only by the express prohibitions of the constitution, but by the nature itself of the power granted; and to be valid and binding the act of the legislature must be within the general scope of legislative authority. The power delegated by the constitution "to make and ordain all manner of reasonable and wholesome orders, laws," etc., confers no authority to make an order or law in plain violation of the fundamental principles of natural justice, though the act may not be prohibited by any express limitation in the constitution.

"For instance, I find nothing in the constitution which in terms prohibits the legislature from making a law to take private property for a public use without making provision for compensation to the owner; yet, because it is contrary to natural justice that property belonging to an individual should be taken from him by the public, or for the public, without paying him the value, to do this is beyond the scope of legislative authority; and an act that should undertake to do this would be unconstitutional and void." * * *

Further along in the same opinion the same judge at page 181 says:

"In this case the owner of the animals injured took an order on the treasurer as his remedy for the loss he had sustained. The amount was paid by an estimate of the actual damage done, and was received as the compensation for it. The recovery by the town, instead of the party who suffered the injury, does not change the nature of the party when made by the defendant. *His interest* in the question of damages is the same whether he pays the amount to the owner of the animals or to the town; and if the payment is called a forfeiture or penalty, or the statute a police regulation, still the interest of the defendant in the amount is the same, and his right to be heard on the question cannot be evaded by the name given to the payment or to the law.

"We are of the opinion that, so far as the statute undertakes to bind the defendant by the decision of the selectmen, fixing the amount of the damage, without giving him an opportunity to be heard on the question, it is not a valid law, because it is in violation of an elementary principle of law and justice, to-wit: That a party is not to be bound by a judgment or other determination to which he was a stranger; that it is not a wholesome and reasonable law within the meaning of the constitution, which grants and defines the legislative authority, nor within the general scope of legislative power, because it is contrary to reason and natural justice."

In Tiedeman on State and Federal control, etc., Vol. 1, page 17, we find the following.

"Chief Justice Marshall said in Marburg v. Madison, (1 Cranch 137): "The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed they are under a solemn duty—to look at the substance of things whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relations to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the court to so adjudge, and thereby give effect to the constitution."

In the case of State of Minnesota v. Barber, 136 U. S. Supreme Ct. Rep. 319 decided May 19, 1890, known as the State Inspection of Animals Case, Mr. Justice Harlan of this court put the same ideas in delivering his opinion in these words:

"The presumption that this statute was enacted in good faith, for the purpose expressed in its title, namely, to protect the health of the people of Minnesota, cannot control the final determination of the ques-

tion whether it is not repugnant to the constitution of the United States. There may be no purpose upon the part of the legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the constitution. In such cases, the courts must sustain the Supreme law of the land by declaring the statute unconstitutional and void."

As this court usually adopts the construction of a statute of a state given to such statute by the court of last resort of such state, it follows that the construction given to said sections 4270, 4273 and 4275 by said Ohio courts is as much a part of the law as if written therein.

The next section of this Chapter V on "Gaming" has we think a material bearing upon the question.

STATUTE.

It is as follows:

"Sec. 4276. [What Contracts, etc., concerning property to be used for gaming purposes, void.] Whenever premises are occupied for gaming or lottery purposes, the lease or agreement under which they are so occupied shall be absolutely void, at the instance of the lessor, who may at any time obtain possession by civil action, or by action of forcible detainer before a justice of the peace; and if any person lease premises for gaming or lottery purposes, or knowingly permits them to be used and occupied for such purposes, and fail immediately to prosecute, in good faith, an action or proceeding for the recovery of the premises, such lessor shall be considered in all cases civil and criminal, as a principal in carrying on the business of gaming, or a lottery, in such building."

In our original Brief at page 10 we made this observation: "Hence the proceedings above mentioned that result in the taking of Marvin's real estate from him without the intervention of a jury are an invasion of his property rights as guaranteed and secured by the law and "without due process of law."

And at page 8 of our Brief we observed: "The petition did not tender a jury issue. We claim that all the Ohio courts erred in entertaining the action in a form that cut off the trial by jury."

Since preparing the said Brief we have perused Mr. Poe's view as set forth in defendant's Brief, pages 14 to 20. The authorities he cites are as we believe, evidence of the law of Ohio.

We, however, are persuaded that the proceedings he in fact con-

ducted in these courts in these cases are an irrefutable answer to his contention.

The petition he framed for Mrs. Trout against Mr. Marvin, (Rec. 21-22) asks for equitable relief only, and tenders only an equitable issue in form. He filed the same in a court of equity, and the case was tried as a case in equity, and appealed as a case in equity, and the Ohio circuit court took and exercised jurisdiction thereof solely as a court of equity, and the case was finally disposed of in that court as a case in equity, no jury being demandable. Mr. Poe having started his case down the equity side of the courts has had the issues tried in courts of equity alone.

Mr. Poe tendered no issue in his petition except an equity issue.

Having thus chosen his forum, and his form of action, and shaped all his proceedings to avoid a jury issue, it seems like the irony of sarcasm when he observes in his Brief at page 18: "No demand was made for such trial; no objection was made to the trial court proceeding to try it, and it is too late on error in the supreme court of the state for the first time to complain that there should have been a jury trial."

We opine that a lawyer who would rise up in a court of equity that never had a jury, and could not have a jury under the law, (even in Ohio), and then and there solemnly and in apparent earnest demand a jury, would be stared at by the court as being a little off.

As well might it be expected and claimed that Mr. Marvin ought to now here in this court rise up in his place and demand a jury on the issues to be tried here.

The law does not, even in these latter days require any litigant to do a vain and foolish thing in the progress of his case through the courts.

POLICE POWER IN OHIO.

Mr. Poe, in his Brief, pages 11 to 14 discusses the Police Power. None of the authorities he cites justifies the taking of private property from the owner and giving it as a gratuity to another person.

If the crime of gambling on the real estate of the owner with his knowledge and consent is such an egregious wrong to the good morals of the state as to require rigorous measures to correct the wrong, the state has ample power to correct the wrong, and to prevent its repetition.

It can find no justification within the 14th Amendment when it seeks to destroy or confiscate the real estate of the owner in which the gambling is done.

2 Tiedeman, State and Federal Control, Etc. §152, page 763.
Welch v. Stowell, 2 Dougl. (Mich.) 332.
State v. Saunders, 66 N. H. 39.

So the taking of the property from the owner as a punishment for allowing an illegal business to be conducted in some of the rooms, and giving it as a gratuity to another person, can find no justification within the protection to the owner, of his private property, guaranteed to him by the 14th Amendment.

Cooley Const. Lim. (6th Ed.) p. 208; 707.
United States v. Reese 92 U. S. 214.
United States v. Cruikshank; 92 U. S. 214.
Lawton v. Steele 152 U. S. 133.
Edson v. Crangle 62 Ohio St. 49.

We have not, anywhere, outside of the Trout-Marvin cases above noted, been able to find an authority that justifies a law, and the proceedings thereunder, that virtually confiscates a man's estate and gives the proceeds to a third person, under the circumstances of these cases now here for review.

Every exercise of the police power of the state, to be valid must be reasonable.

State v. Marble, 72 Ohio St., at p. 33-34. Cites:
Police Powers, Freund, sec. 63.
Rideout v. Knox, 148 Mass., 368.
Lawton v. Steele, 152 U. S. 133.
Plessy v. Ferguson, 163 U. S. 537.
Wisconsin M. & P. R. R. Co. v. Jacobson, 179 U. S. 287.
Dobbins v. Los Angeles, 195, U. S. 223.

JURISDICTION.

Mr. Poe in his Brief, pages 5 to 9, questions the jurisdiction of this Court upon the ground that the petition in error to the supreme court of Ohio was the first pleading in the case claiming that a Federal question was involved. See Rec. 16 to 20.

He is reminded that the trials involved only questions of fact. No federal question on the things we complain of could have been raised until after the decision of the circuit court was made. The questions of law here presented were before the Supreme court of Ohio and the Federal questions decided against us. That court had full power to reverse

the circuit court for any error of law. No error of law so far as the Federal questions are concerned could have been raised and decided earlier in the case.

The Federal questions were in fact before the Supreme court of Ohio as shown by its record. Rec. 13.

Respectfully submitted,

GEO. F. PENDLETON,
Attorney for Plaintiff in Error.

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PLAINTIFF'S FURTHER AUTHORITIES FOR THE ORAL ARGUMENT OF THE CASES

Supreme Court of the United States,

OCTOBER TERM, 1906.

MARVIN vs. TROUT, No. 13.

MARVIN vs. TROUT, No. 14.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

GEORGE F. PENDLETON,
Attorney for Plaintiff,
P. O. [illegible] FINDLAY, OHIO.

Pages continued from additional Brief

Supreme Court of the United States,

OCTOBER TERM, 1905.

WILLIAM MARVIN vs. BELLE B. TROUT, No. 19.

WILLIAM MARVIN vs. BELLE B. TROUT, No. 20.

PLAINTIFF'S ADDENDA TO ADDITIONAL BRIEF.

Containing additional authorities and quotations therefrom to be used in the oral argument of the cases.

William Marvin is not bound by the judgment obtained by Belle B. Trout against Clifford and Gassman. He not being a party thereto is not personally bound by it, and neither could it be made the basis of a claim against his real estate in the petition described. Rec. 21, 22.

Iron Cliffs Co. v. Negaunee Iron Co., 197 U. S. 463, 471.
New Orleans Water Works Co. v. New Orleans, 164 U. S. 471, 480.
Scott v. McNeal, 154 U. S. 34, 46.
Pennoyer v. Neff, 95 U. S. 714, 733.
Windsor v. McVeigh, 93 U. S. 274, 277.
Finley v. United States Bank, 11 Wheat. 304, 307.

In **Iron Cliffs Co. v. Negaunee Iron Co.**, supra, it is said in the syllabus at page 463:

"No person can be deprived of property rights by any decree in a case wherein he is not a party."

And Mr. Justice Day, in delivering the opinion of the Court, at page 471, said:

"It is apparent that the questions decided in the state supreme court were of a non-Federal character, and give no right to review here unless it is true that in this

judgment the Pioneer Iron Company has been concluded, and its property rights taken without giving it an opportunity of being heard in the case. It is fundamental that no person can be deprived of property rights by any decree in a case wherein he is not a party. Not being made a party to the suit, the rights of the Pioneer Company cannot be affected in any way by the decision of the court. Finley v. United States Bank, 11 Wheat., 304, 307; New Orleans Water Works Co. v. New Orleans, 164 U. S. 471, 480."

In New Orleans Water Works Co. v. New Orleans, supra, Mr. Justice Harlan, in delivering the opinion of the Court, at page 480, said:

"A decree declaring the ordinances in question void would have no effect in law upon the rights of the beneficiaries named in the ordinances: for in the absence of the parties interested and without their having an opportunity to be heard, the court would be without jurisdiction to make an adjudication affecting them. Such a decree would appear, upon the very face of the record, not to be due process of law, and could be treated everywhere as a nullity. Windsor v. McVeigh, 93 U. S. 274, 277; Pennoyer v. Neff, 95 U. S. 714, 733; Scott v. McNeal, 154 U. S. 34, 46."

Argument—Police Power.

The State of Ohio has ample police power within its own constitution, and the 14th Amendment to the Federal Constitution, to punish every gambler, and to close and keep closed every gambling house in the state, and laws reasonably necessary to that end ought to be upheld. But when the State farms out a portion of its police power to private persons for their own private gain, and authorizes "any person" to sue and recover for his own private benefit, as a penalty against gambling, or as a penalty or forfeiture against the owner of the property because his tenant has used the same for gambling purposes, and when the judgment is made conclusive against the owner who is not a party to it, and he thereby loses his

property, such results are **not a reasonable exercise of the police power of the State.**

We claim that the whole proceedings as disclosed in these records show a palpable violation of the property rights of Mr. Marvin. That the supposed police power of the State to punish gambling, and the owner of the real estate on which the gambling is done, is thus being applied and enforced in an unreasonable and arbitrary manner. That it virtually amounts to the confiscation of the property as a penalty or forfeiture, not to the State of Ohio, but to a private person, and for the sole benefit of such private person. The vesting by the State of a portion of its police power in any person who is not an officer of the State, and for the private emolument of such private person who may volunteer to enforce the police laws of the State, is an **arbitrary, unjust and unreasonable farming out of such police power.**

If the State of Ohio can thus lawfully farm out its police power for the emolument of a private citizen in this case, it may also farm out the whole of its police power to private citizens in every case, and provide suitable actions for the enforcement of all its police laws, present and future, for the benefit and emolument of such private citizens, regardless of character, or virtue, or fitness to be clothed with such power.

But it is not a reasonable exercise of the police power of the State, and amounts to the arbitrary taking of the property of one person, and giving it to another.

This statute was enacted and became the law of Ohio long before the 14th Amendment became the law of the land. It ought not now to be enforced in violation of the property rights vouchsafed to the citizen by such Amendment.

We claim that such attempted enforcement of such supposed police power by the legislature, and courts of Ohio, contravenes the supreme law of the land.

And this action in Ohio against Mr. Marvin under these statutes is classed as an action for a penalty or forfeiture.

Cooper v. Rowley 29 Ohio St., 547, 550.

Upon the Point suggested in our Additional Brief, page 30:

Every exercise of the police power of the State, to be valid, must be reasonable, we cite the following:

Railroad Company v. Keith 67 Ohio St. 279, 292, 293. (Our Brief p. 18).
State v. Marble, 72 Ohio St. 21, 33-34.
Booth v. State of Illinois, 184 U. S. 425, 428, 429.
Allgeyer v. State of Louisiana, 165 U. S. 578, 579, 591.
State of Minnesota v. Barber, 136 U. S. at page 319.
Lawton v. Steele 152 U. S. 133, 136, 137.
Plessy v. Ferguson, 163 U. S. 537, 550.
Wisconsin M. & P. R. R. Co. v. Jacobson, 179 U. S. 287, 301.
Holden v. Hardy, 169 U. S. 366, 398.
Yick Wo v. Hopkins 118 U. S. 356.
Connelly v. Union Sewer Pipe Co. 184 U. S. 540, 558, 559, 560, 563.
Dobbins v. Los Angeles, 195 U. S. 223, 224.

In **State v. Marble,** supra, at page 33, Judge Summers, delivering the opinion of the Ohio Supreme Court said:

"The earlier decisions were to the effect that the only question for judicial consideration was whether a condition for legislation existed, if it did the matter was entirely within the discretion of the legislature. A resort to the polls was the only road to relief from abuse or mistake. (Munn v. Illinois, 94 U. S. 113.) But the later cases are that the power is subject to express state constitutional limitations and to the inhibition of the fourteenth amendment to the constitution of the United States against any state to deprive any person of life, liberty or property without due process of law and to deny to any person within its jurisdiction the equal protection of the laws, and to the implied limitation that every exercise of the power must be reasonable. Police Powers, Freund, Sec. 63; **Rideout v. Knox, 148 Mass.,** 368; Lawton v. Steele, 152 U. S., 133; Plessy v. Ferguson, 163 U. S., 537; Wisconsin M. & P. R. R. Co. v. Jacobson, 179 U. S. 287; and Dobbins v. Los Angeles, 195 U. S., 223."

In **Booth v. State of Illinois**, supra, the construction of the Illinois criminal code Section 130, being a prohibition against options was involved. The punishment was by fine not less than $10 nor more than $1,000, or imprisonment in a jail not more than a year, or both fine and imprisonment, as the court might adjudge.

We quote from the opinion of the court delivered by Mr. Justice Harlan at page 429:

"Taking the statute to mean what the highest court in the state says it means, is it unconstitutional?"

"If looking at all the circumstances that attend, or which may ordinarily attend the pursuit of a particular calling, the state thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of that matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object but is a clean unmistakable infringement of rights secured by the fundamental law. Mugler v. Kansas 123 U. S. 623, 661; Minnesota v. Barber 136 U. S. 313, 320."

Justices Brewer and Peckham dissented from the judgment.

In **Allgeyer v. State of Louisiana**, supra, the statute prohibited the making of contracts of insurance with companies outside the state under severe penalties, unless such companies had complied with the law of the state which imposed restrictive terms upon such foreign companies.

The prisoner had made a contract to be performed in another state. The question was whether he had really broken the law of Louisiana within the 14th Amendment.

Opinion by Mr. Justice Peckham admitting the right of the State to exclude foreign insurance companies from doing business in the State, speaking of the statute he said in delivering the opinion of the court at page 589:

"As so construed we think the statute is a violation of the 14th Amendment of the Federal Constitution, in that it deprives the defendants of their liberty without

due process of law. The statute which forbids such act does not become due process of law, because it is inconsistent with the provisions of the Constitution of the Union. The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of the person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will, to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purpose above mentioned."

And further at page 591:

'Such a statute as this in question is not due process of law, because it prohibits an act which under the Federal Constitution the defendants had a right to perform. This does not interfere in any way with the acknowledged right of the State to enact such legislation in the legitimate exercise of its police or other powers as to it may seem proper.

"In the exercise of such right, however, care must be taken not to infringe upon those other rights of the citizen which are protected by the Federal Constitution."

State of Minnesota v. Barber, supra, involved the validity of an act of the legislature for the protection of the public health, but by its rigorous provision as to the inspection of animals within the state when shipped in from other states, was in a measure prohibitory.

Opinion by Mr. Justice Harlan. He said, among other things:

"The presumption that this statute was enacted in good faith, for the purpose expressed in its title, namely, to protect the health of the people of Minnesota, cannot control the final determination of the question whether it is not repugnant to the Constitution of the United States.

"There may be no purpose upon the part of the legislature to violate the provisions of that instrument, and

yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the Constitution. In such cases, the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void."

In **Lawton v. Steele**, supra, error was prosecuted to the judgment of the Supreme Court of the State of New York affirming a judgment of the general term, and ordering judgment absolute for Steele, who was a fish warden empowered by the statutes of New York to destroy all fish nets placed in certain prohibited waters in violation of the statutes, and which declared all such nets to be a common nuisance.

Mr. Steele, acting for the State as such officer captured a few nets worth about $15 apiece and destroyed them as required by statute.

Suit for damages was successfully prosecuted against him in the lower courts of the state resulting in a verdict and judgment for $246 damages and $166.09 costs. The Supreme Court of the State upheld the law.

Opinion in this Court by Mr. Justice Brown:

At page 136 the Justice discusses the scope of the general police power of the states, and among other things speaks of "the prohibition of gambling houses and places where intoxicating liquors are sold."

He further says:

"Beyond this, however the State may interfere whenever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. Barbier v. Connolly 113 U. S. 27; Kidd v. Pearson 128 U. S. 1."

He further says at page 137:

"To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public, generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the

accomplishment of the purpose, and not unduly oppressive upon individuals.

"The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words its determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts."

After calling attention to many examples where the police power had been abused, the Justice further says: (p. 141.)

"But where the property is of trifling value, and its destruction is necessary to effect the object of a certain statute, we think it is within the power of the legislature to order its summary abatement."

Mr. Chief Justice Fuller dissented upon the ground that the smallness of the amount involved ought to make no difference in the principle involved, and that the owner of the property destroyed was entitled to the benefit of the Federal guarantee against the spoliation of his property.

Mr. Justice Field, and Mr. Justice Brewer joined in the dissent.

In **Yick Wo v. Hopkins** 118 U. S. 356 supra, error was prosecuted to the Supreme Court of the State of California to review a judgment of that court which held an ordinance of San Francisco valid that made it unlawful to carry on a laundry without the permit of the supervisors of the city, unless it be carried on in a building built of brick or stone.

The plaintiff was arrested and imprisoned, and the case involved the legality of the ordinance.

The California Supreme Court had denied the relief, and assumed to follow the cases of Barbier v. Connolly 113 U. S. 27; and Soon Hing v. Crowley 113 U. S. 703.

Mr. Justice Matthews says:

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says 'nor shall any state deprive any person of life, liberty or prop-

erty without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws."

And further along in the opinion he says:

"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

This Court reversed the case on the ground that no reason for the discrimination existed, or was shown "except the will of the supervisors."

In **Plessy v. Ferguson** 163 U. S. 537, supra, error was prosecuted from this Court to the Supreme Court of Louisiana to review a judgment of that court denying the writ of prohibition which was asked to prohibit the further trial of the case in the lower court for the violation of the criminal statute of the state. The case turned upon the validity of the Act of 1890 which provided for and compelled the common carrier to provide separate railway carriages for white and colored people.

The judgment of the Supreme Court of Louisiana was affirmed.

Mr. Justice Brown, in delivering the opinion of the Court, among other things, said:

"So far then, as a conflict with the 14th Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature.

"In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of

the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the 14th Amendment than the Acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures."

Mr. Justice Brewer not sitting. Mr. Justice Harlan dissenting.

In **Wisconsin M. & P. R. Co. v. Jacobson**, supra, the case here was error to the Supreme Court of Minnesota to review a judgment which affirmed a decision requiring track connections between two railroads.

The decision of the State Supreme Court was affirmed. The opinion of the Court was delivered by Mr. Justice Peckham.

At page 301 he said:

"The reasonableness of the judgment with reference to the facts concerning each case must be a material, if not a controlling factor upon the question of its validity. A statute, or a regulation provided for therein, is frequently valid, or the reverse, according as the fact may be, whether it is a reasonable or an unreasonable, exercise of legislative power over the subject matter involved. And in many cases questions of degree are the controlling ones by which to determine the validity, or the reverse, of legislative action.

"We think this case is a reasonable exercise of the power of regulation in favor of the interests and for the accommodation of the public and that it does not, regard being had to the facts, unduly, unfairly, or improperly affect the pecuniary rights or interests of the plaintiff in error."

In **Holden v. Hardy**, supra, a writ of error was prosecuted from this Court to the Supreme Court of the State of Utah to test the validity of a statute of that State limiting the time of employment of workmen in underground

mines to eight hours a day, and making the employer or person requiring or permitting longer time underground liable to fine and imprisonment. The case was a criminal action for a breach of the statute.

The State judgment was affirmed in this Court.

Mr. Justice Brown delivered the opinion of the Court, from which we quote at page 398:

"We have no disposition to criticise the many authorities which hold that state statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon this subject. It is sufficient to say of them that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of employees, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class. The distinction between these two different classes of enactments, cannot be better stated than by a comparison of the views of this court found in the opinion in Barbier v. Connolly, 113 U. S. 27, and Soon Hing v. Crowley 113 U. S. 703, with those later expressed in Yick Wo v. Hopkins 118 U. S. 356."

Mr. Justice Brewer, and Mr. Justice Peckham dissented.

In **Connolly v. Union Sewer Pipe Company** 184 U. S. 540, supra, the legality of the Illinois Trust Act of 1893 was involved. The exemption of certain classes from the operation of the law was held to vitiate the law.

We quote parts of the opinion of Mr. Justice Harlan beginning at page 558:

"What may be regarded as a denial of the equal protection of the laws is a question not always easily determined, as the decisions of this court, and of the highest courts of the States will show. It is sometimes difficult to show that a state enactment, having its source in a power not controverted, infringes rights protected by the na-

tional constitution. No rule can be formulated that will cover every case.

But upon this general question we have said that the guaranty of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.' Missouri v. Lewis 101 U. S. 22, 31."

We have also said "The 14th Amendment, on declaring that no State "shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws" undoubtedly intended not only that there should be no arbitrary deprivation, of life or liberty, or arbitrary spoilation of property, but that equal protection and security should be given to all under like circumstances, in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others, in the same calling, and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than is prescribed to all for like offenses."

"Barbier v. Connolly 113 U. S. 27, 31."

"This language was cited with approval in Yick Wo v. Hopkins, 118 U. S. 356, 369. * * * in which it was also said that "the equal protection of the laws is a pledge of the protection of equal laws."

"In Hayes v. Missouri, 120 U. S. 68, 71, * * * we said that the 14th Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, shall be treated alike, under like circumstances and

conditions both in the privileges conferred, and in the liabilities imposed.

Due process of law and the equal protection of the laws this court has said "are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

"Duncan v. Missouri, 152 U. S. 377, 382."

And at page 563 we further quote:

"It is one thing to exert the power of taxation so as to meet the expenses of government, and at the same time, indirectly, to build up or to protect particular interests or industries. It is quite a different thing for the state, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates."

Mr. Justice McKenna dissented.

In **Dobbins v. Los Angeles** 195 U. S. 223, supra, the writ of error was to the Supreme Court of the State of California, seeking the reversal of a judgment of that Court affirming a judgment of dismissal made by the Superior Court. The case was made by bill in equity to protect property interests which were menaced, and was finally decided upon demurrer to the bill. This Court held that the relief should have been granted by the courts of California.

Case was decided November 14, 1904.

The opinion is by Mr. Justice Day.

I will content myself by quoting the syllabus.

"While every intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health, municipal by-

laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether, under the guise of enforcing police regulations, there has been an unwarranted and arbitrary interference with constitutional rights to carry on a lawful business, make contracts, or use and enjoy property.

While the right to exercise the police power is a continuing one and a business lawful today may in the future become a menace to the public welfare and be required to yield to the public good, the exercise of the police power is subject to judicial review, and property rights cannot be wrongfully destroyed by arbitrary enactment.

Although an ordinance may be lawful on its face and apparently fair in its terms, yet if it is enforced in such a manner as to work a discrimination against a part of a community for no lawful reason, such exercise of power will be invalidated by the courts. Yick Wo v. Hopkins, 118 U. S. 356."

A municipal ordinance was adopted in September fixing the limits within which gas works might be erected.

Thereafter a permit was granted for the erection of a plant; in November another ordinance was adopted amending the September ordinance and by which ordinance the territory on which the works were in course of erection and purchased in reliance upon the September ordinance was excluded. There had been no change in the neighborhood or conditions. Held to be void as against the holder of the permit as an arbitrary and discriminatory exercise of the police power which amounted to a taking of property without due process of law and an impairment of property rights protected by the Fourteenth Amendment.

Where property rights will be destroyed unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a court of equity."

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Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

BRIEF FOR DEFENDANT IN ERROR.

Supreme Court *of the* United States,

OCTOBER TERM, 1904.

NO. ~~145~~ 19.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT.

(19,328)

AND

NO. ~~142~~ 20.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT.

(19,329)

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

A. B. Dandy Printing, 117 East Southside St. Findlay, O.

Supreme Court *of the* United States,

OCTOBER TERM, 1904.

NO. 246.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

Supreme Court *of the* United States,

OCTOBER TERM, 1904.

NO. 247.

WILLIAM MARVIN, PLAINTIFF IN ERROR,

vs.

BELLE B. TROUT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

I. STATEMENT OF CASES.

The two cases here numbered 246 and 247 were prepared and tried together in the common pleas, circuit and supreme courts of the state of Ohio, and the same questions are sought to be raised in both in this court. Anticipating that this court will grant the privilege it may, under subdivision 8 of Rule 26, we assume they may again be heard together and undertake to so argue them accordingly.

The statutes of Ohio in which the subject of gaming is especially legislated upon, is known as Title V, Ch. 5, Revised Statutes of Ohio, revision of 1904, which contains eight sections, these being numbered 4269 to 4276 inclusive.

Two of these sections are complained of in this court, to-wit, sections 4273 and 4275. These two sections read as follows:

Sec. 4273. If the person losing such money or thing of value as provided in section forty-two hundred and seventy does not, within the time therein specified, without collusion or deceit, sue, and with effect prosecute, for the money or thing of value so lost and paid or delivered, any person may sue for and recover the same, with costs of suit, against any winner as aforesaid, for the use of the person prosecuting the same.

Sec. 4275. The property, both real and personal, of a defendant, against whom a judgment is rendered under this chapter, either for fines, costs, or to recover money, or other thing of value, lost or paid, shall be liable therefore, without exemption, and such judgment shall be a lien thereon until paid; if the owner of the building in which the money was lost knowingly permits it to be used for gaming purposes, such building, and the real estate upon which it stands, shall be liable therefore in the same manner; and the guardian or trustee of a minor, insane person or idiot, who permits any property under his charge to be used for gaming purposes, and the same becomes liable on account thereof, shall be liable to his ward for the amount thereof.

For many years the plaintiff in error, Mr. Marvin, had leased the real estate described in this record, and which is located on the east side of Main street directly opposite the court house in Findlay, to James Clifford and Jacob Gassman. The period of such tenancy included the period of time from March 20, 1893, to June 19, 1894, fifteen months, and these months in these two cases are divided into two periods, the first from March 20, 1893, to March 19, 1894. This is the period referred to in the record of the first of these cases here numbered 246; the second period, from March 19, 1894, to June 19, 1894, is the period referred to in the record of the second case or that here numbered 247, the two periods constituting a continuous space divided only by these two cases.

On the 20th day of September, 1894, Belle B. Trout, the wife of Frank H. Trout, under favor of said section 4273 Ohio statutes, commenced an action in the court of common pleas of Hancock county, Ohio, and filed her petition (see p. 52 rec. case No. 246 here) to recover for losses alleged her husband sustained at gaming in this place to these people during said twelve month period, and in that case on May 2, 1895, in a trial to a jury she recovered a judgment for $3473 and costs. On March 22, 1895, she filed her petition (see p. 59 rec. case here No. 247) in the same court to

recover for losses her husband sustained at gaming during the said three month period, and in that case she recovered a judgment for $1300.

Within a year from the rendition of these respective judgments she brought separate actions upon them against Mr. Marvin, the owner of the property, under favor of said sec. 4275 Ohio statutes, seeking to have these judgments against these tenants made a lien upon this property of Mr. Marvin wherein such gaming transactions were carried on and to have the property sold and the judgments satisfied. These cases were tried in the common pleas court and both resulted in her favor, and Mr. Marvin appealed both to the circuit court of the state, where they were tried *denovo* and the records here presented, made. Both again resulted in her favor and both were taken on error to the supreme court of the state, where the circuit court in both cases was affirmed, and from that judgment of affirmance error is prosecuted here. The case in which she had judgment for $3473 on which the subsequent action to enforce it against the property is this case No. 246, and the case in which she had judgment for $1300 on which she so commenced action to enforce claim against the building is this action here No. 247.

The circuit court in both cases made separate findings of fact, and in both cases, among other things (see p. 32 both records) finding 2 as follows:

That during all "said period" James Clifford and Jacob Gassman held and occupied "said real estate" under a lease from defendant as tenants of said William Marvin, and were engaged in and upon "said real estate" in the business of gaming and gambling for money at games of chance, in violation of the laws of the state of Ohio, and of the provisions of chapter five, title five of the Revised Statutes of the state of Ohio.

And found the further facts following also (see p. 32 both records) finding No. 3:

That within "said period" one Frank H. Trout, husband of plaintiff, in and upon "said real estate", engaged with said James Clifford and Jacob Gassman in said games of chance and gambling operations so there then conducted, and betted and wagered his money therein and thereon, and lost at said gambling to said James Clifford and Jacob Gassman, who at said gaming won from said Frank Trout, the sum of three thousand four hundred and seventy-three dollars in money, which sum said Trout then paid to them. That afterwards, at the March term, 1895, of the court of common pleas of said county of Hancock, to-wit, on the 2d day of

May, 1895, in an action therein, theretofor duly brought by her pursuant to section 4273 of the Revised Statutes of Ohio, to recover said moneys so lost, the plaintiff, by the consideration of said court, duly recovered a judgment therefor against said James Clifford and Jacob Gassman, to-wit: for said sum of three thousand four hundred and seventy-three dollars, the same being the amount of money found by said court in said action to have been so lost by said Frank H. Trout at said gaming and gambling within "said period", and by him paid to said James Clifford and Jacob Gassman; also for the costs of said case in the sum of one hundred and forty-three and 97-100 dollars, and that plaintiff, in consequence of said loss at gaming, sustained damages to the amount of said judgment.

Also (same page records) finding 4:

That said judgment for three thousand four hundred and seventy-three dollars was so rendered for said money so lost and paid by Frank H. Trout to said James Clifford and Jacob Gassman while so gambling with them within "said period" in and upon "said real estate", which said judgment for damages and costs is still in full force and effect, the same never having been reversed, modified or set aside, and no part thereof has ever been paid; that there is now due to the said plaintiff upon said judgment the said principal sum of three thousand four hundred and seventy-three dollars, together with interest thereon to this date, the further sum of sixteen hundred and nine dollars, in all five thousand and eighty-two dollars and the costs of said case, for which plaintiff also so recovered judgment the further sum of one hundred forty-three and 97-100.

Also (same page records) finding 5:

That during all "said period" the said defendant, William Marvin, had actual knowledge that said James Clifford and Jacob Gassman were so using his "said real estate" for said gaming and gambling purposes aforesaid, and that they were therein and thereon conducting and carrying on said games of chance, gaming and gambling contrary to law as aforesaid, and knowingly permitted his "said real estate" to be so used and occupied for said gaming and gambling purposes and for said games of chance at which said Frank H. Trout so lost said sum of money.

And said circuit court as its conclusions of law, among other things held that the building was liable, decreed the judgments liens thereon, and ordered a sale of the same to satisfy the judgments. These findings, judgments and decrees were affirmed in the supreme court of the state, and of this complaint is here made.

The assignments of errors in this court are the same in both cases and are that the judgments of the circuit court and those of the supreme court of Ohio affirming the same are in violation of the following provision of the constitution of the United States and the amendments, to-wit:

Sec. 1, Art. XIV of the Amendments;
Art. I, Sec. 9;
Art. I, Sec. 10;
Art. III, Sec. 3, of the Constitution of the United States. And that said sections 4273 and 4275, Ohio Statutes, as so sought to be enforced, contravene the fifth, sixth, seventh, eighth, ninth and fourteenth amendments to the Constitution of the United States.

These are the grounds upon which this court is asked to reverse the courts of Ohio.

THE JURISDICTIONAL QUESTION.

The first proposition which confronts us is that of the jurisdiction of this court. Section 1, Article IV of the Constitution of Ohio, as amended October 9, 1883, vests the judicial power of the state in certain courts. Section 2, Article IV of that instrument fixes the jurisdiction of the state supreme court and gives that court no original jurisdiction in cases such as these here at bar and leaves its appellate jurisdiction to be fixed by statute.

This appellate jurisdiction is defined by section 6710 Revised Statutes of Ohio, which reads:

Sec. 6710. A judgment rendered, or a final order made by a circuit court, or a judge thereof, court of common pleas, or a judge thereof, probate court, insolvency court or a superior court or a judge thereof, may be reversed, vacated or modified by the supreme court, on petition in error, for errors appearing on the record; but no petition in error except as to the judgment or final order of the circuit court, or a judge thereof, or of the general term of any superior court, or a judge thereof, shall be filed without leave of the supreme court, or a judge thereof, and the supreme court shall not in any civil cause or proceeding, except when its jurisdiction is original, be required to determine as to the weight of the evidence;

(Finding of facts.) and on application of any party excepting to a ruling or decision of the circuit court during the trial, or on motion for a new trial, such court shall find from the evidence, and state on the record the facts upon which the alleged error arises, or which may be material in determining whether error has intervened or not.

Section 6711 Ohio Statutes among other things provides:

When a petition in error is filed in the supreme court so much of the record to be reviewed as will show the error complained of shall be printed, and ten of the printed copies thereof filed with the papers.

Section 6713 Ohio Statutes provides among other things:

The proceedings to obtain such reversal, vacation or modification shall be by petition in error, filed in a court having power to make the reversal, vacation or modification and setting forth the errors complained of.

Observe: These cases went from the state circuit court to the supreme court upon error and that court was asked to reverse these final judgments and decrees of the circuit court, and in both the facts had been separately found and the conclusions of law separately stated. The error, therefore, if error intervened, must have resided in the finding of the facts from the evidence, or in the conclusions of law upon the facts found. The supreme court of Ohio, it is observed, by provision of above statute, is relieved from the duty of weighing the evidence and may take the findings of fact sent up by the circuit court as the facts of the case. That when the petition in error is filed in the supreme court it must be accompanied by printed copies of so much of the record as will show the error complained of.

Clearly the record referred to is the record in the circuit court, and the errors complained of must appear in that record, else how could the printing of the record *show* the errors complained of? Hence the questions on which error is predicated must have been raised and must appear in the record of the circuit court. The circuit court could not be *reversed* except for errors it committed, which errors must be apparent upon the record it made. Notice, this section 6713 provides the petition in error in the supreme court shall set "forth the errors complained of", the errors made to appear by the printed record. Observe: it is not

provided by any statute that the petition in error shall set forth the *facts* relied on, but only the *errors* that the printed record shows.

So that the insertion of new matter in the petition in error in the supreme court of the state, for the first time in the case, would be to ask that court to act in that particular as a court of original jurisdiction, and to reverse the judgment of the circuit court which rests upon a record made of all the questions there raised or submitted, and which judgment upon such record is conceeded to be right, and to ask the reversal, not because there is error in the record but because of new matter outside of that record. Such a judgment in the nature of language and the primitive definition of words could not be a judgment of *reversal* but rather a judgment upon a new case first made in a petition in error in a court with only appellate jurisdiction, and which judgment so reached is to supercede or take the place of that of the circuit court. This would be an anomaly; the thought is amusing. If a note is sued in common pleas and the defense was payment and plaintiff prevailed and defendant should prosecute error to the circuit court and there in the petition in error for the fiirst time it is alleged the note was a forgery, could the lower court be reversed for this new defense? Not only, no, to this, but the appellate court would have no power or jurisdiction to consider such new defense, and if it even did certify that such new matter was presented to it in that way, would such certificate give jurisdiction to the next higher court of appellate jurisdiction to consider this question when asked to reverse the judgment of the court where it was not raised?

If this cannot be done in passing by petition in error from the courts of original jurisdiction in a state to those of appellate jurisdiction, what reason appears for it when the case leaves the state court by petition in error to this court for review?

In Ohio the common please court is the court of general jurisdiction, the circuit court is a court of appellate jurisdiction but also with original jurisdiction in special cases, the same as the supreme court, and with jurisdiction to hear cases *denovo* on appeal from the common pleas and in which circuit court on appeal amendments may be allowed to the pleadings. But of course this is not so in case there is error.

The attention of this court is respectfully asked to the records of the cases to an examination of all the pleadings in the trial courts, the common pleas and circuit courts. In this case No. 246, see petition at page 21, answer at page 23, amendment to answer at page 24; and in the case here No. 247, see petition at page 21

and 22, answer page 22 and 23 and reply at page 24, and amendment to answer at page 24, reply to amendment to answer page 25.

These are all the pleadings ever filed in the cases and upon the issues raised by them and the evidence the cases were tried resulting in the finding and decree in the common pleas, and the findings of facts and conclusions of law in the circuit court to which attention here has already been called.

Observe: There is not a word in any pleading in either of these trial courts in which these records are made which could give rise or suggestion to a thought of the federal constitution or any of the amendments or a thought that any federal question was ever thought of in the cases. This is not only so as to the pleadings, but nowhere in the entire two records of the two cases will it be claimed that any question was raised or hinted at tending to present to those courts any federal question, any question involving or suggesting the repugnancy of the Ohio gaming statutes to the federal constitution or the amendments. The first time any such question was ever attempted to be raised in the history of the cases was when the petition in error was filed in the supreme court of Ohio. We think this was too late to give jurisdiction of such questions here. All the supreme court of Ohio could do was to reverse or affirm on the record as made, and it affirmed, and all this court can do is to reverse or affirm the supreme court of Ohio upon the same record it had.

Another most potent reason why this is so suggests itself at this point. If this court were to reverse the supreme court of Ohio, basing its order of reversal upon the fact of the erroneous holding of that court upon the federal question there first attempted to be raised, the reversal is not upon the record of the trial court and could reach no further back than the court where the error was committed and hence could not disturb the judgment of the circuit or common pleas court, and if the cases were to go upon reversal from this court to the supreme court of the state, it would be because that court made a mistake upon a new question raised, and neither this court nor the supreme court of the state would have jurisdiction to reverse the circuit court, for in that court the record is without error.

FEDERAL AUTHORITIES UPON THIS FIRST PROPOSITION INVOLVING THE JURISDICTION OF THIS COURT.

First. This court would not assume jurisdiction of these cases because of the complaint here that the holding of the Ohio courts deprive Mr. Marvin of any rights guaranteed to him by the fifth, sixth, seventh, eight or ninth amendments referred to, for these were not intended to limit the powers of the states in respect to their own people but to operate on the national government only.

Spies v. Illinois, 123 U. S. 131-2, 166, and cases here cited.

Second. The claim here sought to be made is that the statutes of Ohio referred to are repugnant to the constitution of the United States, but as we have seen no such claim was set up or made in the trial courts of Ohio, it follows that this court would have no jurisdiction to entertain these cases for that reason.

Spies v. Illinois, 123 U. S. 131-2, par. 8 syl., p. 181.
Brooks v. Missouri, 124 U. S. 394-5;
French v. Hopkins, 124 U. S. 524;
Powell v. Brunswick County, 150 U. S. 433-9;
Morrison v. Watson, 154 U. S. 111-115;
Miller v. Texas, 153 U. S. 535-8-9;
Sayward v. Denny, 158 U. S. 180-4;
Giles v. Teasley, 193 U. S. 146-160.

SECOND PROPOSITION.

If this court should pass adversely to our position upon this question of jurisdiction then there remain the questions raised under said Art. 1 Sec 9; Art. 1, Sec. 10; Art. 3, Sec. 3 of federal constitution and Art. 1, Sec. 14 amendments.

First. As to *ex post facto* law the definition of the words is sufficient. Bouvier Law Dictionary.

"An act for the prevention of gaming" has been in force in Ohio ever since 1824, amended March 12, 1831, S. & C. Stat. 664, 3d Curwen p. 2483; Sec. 14 amended April 6, 1866 (63 O. L. 163. It reads:

Section 14. That all fines and forfeitures imposed by the provisions of this act, shall be collected and paid over to the treasurer of the

proper county within twenty days after the collection thereof, to be applied to county purposes; and for all fines and costs assessed against any person or persons for any violation of this act, except the fines imposed by sections six and seven, and for all damages and costs recovered by any person or persons in action brought under the act to which this is amendatory, to recover back money lost at gaming, the real estate and personal property of such person or persons so fined, or against whom such damages and costs may be recovered, of every kind, without exemption, shall be liable for the payment thereof, and all such fines and costs, and damages and costs hereinbefore referred to, shall be a lien upon such real estate until paid; and said fines and costs, and said damages and cost, shall also be and remain a lien on the real estate and building so used and occupied for gaming, contrary to the act to which this is amendatory and in which the money so sought to be recovered shall have been lost, until said fines and costs, or said damages and costs be fully paid; provided, the owner of the real estate or building so used and occupied, rented the same, or knowingly permitted it to be used for the purpose of gaming; provided further, if such real estate and building, or either of them, belong to a minor, insane person or idiot, the guardian or guardians of such minor or minors, or insane person or idiot, who has control of such real estate and building, or either of them, knowingly permitted said real estate or building to be used for the purpose aforesaid, shall be liable for and account to such ward or wards, insane person or idiot, for all damage in consequence of the use and occupation of such real estate and building, and liabilities for such fines, damages and costs, as aforesaid.

Observe: This section makes the judgment a lien on the property where the gambling is done.

Sections 1, 2, 3, 4 and 5 of the act of 1831 are substantially reenacted in sections 4269 to 4274 inclusive above referred to. Section 4275 had no corresponding section in the original act, but the above amendment of 1866 of Sec. 14, and which was in effect reenacted on April 12, 1876 (73 O. L. p. 250) gave us first that section, in both which enactments the judgment against the winner is made a lien on the real estate of a third party where the gambling was done with the knowledge of the owner.

In the Revised Statutes of Ohio of 1880 these sections complained of in the cases at bar, to-wit, 4273 and 4275 read precisely as they read in the last Revised Statutes of Ohio of 1904, and during the twenty-five years, 1880 to 1905, they have not been changed in one iota but have remained the same.

Ever since 1880 section 4275 reads, "shall be held liable in the same manner," the wording then having been changed from "shall be and remain a lien."

So that in Ohio ever since 1866, a period of thirty-eight years at least, this statute has been in force, but the dereliction here charged against Mr. Marvin did not occur until 1903-4, before which this law had been in force for twenty-seven years. So it is difficult to discover anything here in the nature of *ex post facto* legislation.

Observe: If we allow that a distinction exists between the *ex post facto* law referred to in the federal Constitution and the *retroactive law* prohibited by the Ohio state Constitution and allow that the former is a law which takes an innocent act and makes it a crime afterward, or one which changes or adds new penalties to an act which was a crime when done, still it seems that the cases at bar have nothing within the meaning or definition of either.

In Sturges v. Carter, 114 U. S. 511, a portion of the syllabus reads as follows:

Mr. Justice Story's definition of a retroactive law in Society for Propogating the Gospel v. Wheeler, 2 Gall. 139, has been adopted by the Supreme Court of the State of Ohio, and is quoted and adopted by this court.

Mr. Justice Wood in the opinion in that case, at page 519, gives the definition referred to by Mr. Story as follows:

Upon principle, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to the transactions or considerations already past, must be deemed retrospective.

Observe: The definition here referred to as having been adopted by the supreme court of Ohio has reference to the holding in Rairden and Burnet v. Holden, 15 Ohio St. 207, when construing the clause in the Constitution of Ohio which prohibits the enactment of laws which are retroactive.

THIRD PROPOSITION.

The power of the state to pass and enforce laws in the nature of police regulations, and whether the statutes of Ohio here involved are not of this nature.

The statutes of Ohio for the prevention of gaming and those to

prevent the evils resulting from the sale of intoxicating liquors have similar objects and belong to the same class of legislation.

Sec. 4357 Revised Statutes of Ohio provides for recovery of judgment against the seller of liquor and corresponds to section 4273 gaming statutes, and section 4363-4 provides such judgment may be made a lien on the property in separate action and corresponds to section 4275 gaming statutes under which these actions were brought.

This section 4364 has been in force since April 18, 1870 (67 O. L. 102). In December, 1873, the supreme court of Ohio held this statute valid, 23 Ohio State, 619. At the January term, 1892, the supreme court again sustained this provision, 49 Ohio State, 447. In this case it was directly there held that this statute is not in conflict with fourteenth amendment to the constitution of the United States. At the January term, 1898, the supreme court again sustained this statute, 59 Ohio State, 342. So this statute has been sustained at least for thirty-three years by the supreme court of Ohio.

In December, 1874, the gaming statutes referred to were held valid in Ohio. Binder v. Finkbone, 25 Ohio State 103. At the January term, 1900, in the first of the cases at bar taken on demurrer, the Ohio supreme court again held the statute valid, 62 Ohio State 132. Again in the cases here the circuit court of Ohio, 2442 Ohio Circuit Court, 333, is sustained by the supreme court.

So in both these classes of state legislation the supreme court of Ohio has by uniform holding for a third of a century sustained these statutes and enforced them in every case before it.

Observe: Ohio is not the only state where the like statutes are sustained by the highest courts. See Code of Iowa Liquor Sales, sec. 2422.

Polk County v. Hierb, 37 Ia., 361-365.
Lafrance v. Krayer, 42 Ia. 147.

In the state of New York an act was passed April 29, 1873, known as "Civil Damage Act," Chap. 646, Laws of 1873, making the building where liquors sold liable, and sustained in Berthoff v. O'Riley, 74 N. Y. 509.

In Illinois the Revised Statutes 1901 (Hurd), sections 132-3, prohibit gaming as do these Ohio statutes, and section 127 Hurd's Illinois Code, makes landlord liable when he rents for the purposes of gaming.

In Illinois, section 10 of Dram Shop Act (1 Starr & Curtis p.

973) contains the same provision as the Ohio liquor law holding the building liable. In Bell v. Cassem, 158 Ills. 45, this law is held valid.

Upon the police power exercised by the state of Illinois see Booth v. State of Illinois, 186 Ills. 43. This case went to the supreme court of the United States and was affirmed, 184 U. S. 425.

In New York, in Berthoff v. O'Riley, 74 N. Y. 509; also reported in 30 Amer. Rep. 323-333-6, this power of the state legislature is upheld.

Observe: The liability to seizure attaches to the *thing*. If a man uses his property for the purposes of the violation of the laws, he looses his right to have it at all.

Dobbins v. Distillery, 96 U. S. 395, 400-1;
The Palmyra, 12 Wheat., 1;
United States v. Brig Malek Adhel, 2 How., 40;
Munn v. State of Illinois, 4 Otto, 114;
Schooner Ann, 9 Cranch, 289;
The Little Charles, Brockenbrough's Rep.;
United States v. Distillery, 2 Abbott, 192;
Revised Statutes of the United States, secs. 2802, 2867-8.

Besides, section 1, article 14, amendments, the priveleges and immunities not to be infringed are those of citizens of the United States, for nothing is said there of those belonging to citizens of the states. This is a remarkable omission if it was intended thereby to protect him against the legislation of his own state.

See 16 Wall. 36-7.

So we assume that since Mr. Marvin is a citizen of the state of Ohio, as well as of the United States, he may not complain that any state law which abridges his privileges as a citizen of the state only will be interfered with here as repugnant to the provisions of this fourteenth amendment. Such laws must clearly abridge his privileges as a citizen of the United States. This it does not do. The United States itself abridges all such privileges as are here claimed and hence a state law which does the same thing is not in conflict with the federal laws or constitution.

These references all show that the United States has police powers which it will exercise to compel individuals and property to obey the laws passed to secure observance of the line which divides one man's liberty and another's right.

FOURTH PROPOSITION.

As to the right of Mr. Marvin to have had these cases tried to a jury.

First. These records no where show that in either of the trial courts he demanded a jury but in both that he came to trial with his attorneys and the cause came on and was submitted to the court.

Second. "Due process of law" does not imply or require a jury trial.

Third. The authority, state or federal, which has power to create courts has power to fix their jurisdiction subject only to the limitation that constitutional provisions shall not be infringed, and within these limits laws which provide an opportunity for a trial by an impartial tribunal meets the requirements of "due process of law."

Fourth. We have already seen that by statutes and the decisions of the highest court of the state of Ohio in this very class of cases, established by a uniform course, for at least a third of a century the very process employed in the cases at bar has answered in that state as "due process of law." There is no express provision of the state or federal constitution in such cases, nor in the statutes in either jurisdiction, providing a jury trial, but the law does provide in what cases the party is entitled to a jury trial and these at bar are not among them.

In Adler v. Whitbeck, 44 Ohio State, pp. 568-9, the learned Judge Minshall in the opinion says:

III. The next objection to the validity of this statute is, that the summary methods by which the tax and penalties imposed by it are assessed and collected, deprive the individual of the guaranty contained in the sixteenth section of the bill of rights, that "every person for an injury done him in his lands, goods, etc., shall have remedy by due course of law;" and, for a like reason, violates the clause in the fourteenth amendment of the federal constitution, "nor shall any state deprive any person of life, liberty, or property, without due process of law."

It is apparent from the terms employed, that the clause incorporated by this amendment in the federal constitution imposes no limitation upon the legislative power of the general assembly of this state that had not been imposed by its bill of rights. Due course and due process of law are one and the same thing. We do not feel required to enter upon any extended discussion of this important constitutional guaranty. For whatever of doubt there

may be in its application to a variety of cases, it is well settled that it does not affect the usual modes that have been long adopted for the assessment and collection of taxes; in other words, these modes are recognized as due process of law. "It has long been settled that while one is to be protected in his interests by the 'law of the land' he has a right to 'the judgment of his peers' only in those cases in which it has immemorially existed, or in which it has been expressly given by law. The clause recited from Magna Charta does not imply the necessity for judicial action in every case in which the property of the citizen may be taken for the public use. On the contrary, a legislative act for that purpose, when clearly within the limits of legislative authority, is of itself the law of the land.

Article 3, section 2, Federal Constitution, provides:

The trial of all crimes shall be by jury.

And Article 6 of the amendments has a similar provision as to crimes.

Article 7 of the amendments provides in civil cases the common law right to jury trial shall be preserved.

But as we have seen, these amendments, from five to nine inclusive, have no reference to trials in state courts. And above article 3, section 2, of Federal Constitution, providing *where* the trial shall be held in the state where committed, shows this also refers to Federal court trials. It could hardly be that the federal constitution should prohibit the trial of an equity case to a jury. The manner of trials and the tribunals in which causes are triable are fixed by the states in matters over which the states have jurisdiction and they differ. For example, in some of the states divorce cases may be tried to a jury, but this has never been so in Ohio.

In civil cases the constitution of Ohio does not attempt to provide what cases may be tried to the court and what to the jury. The provisions of that instrument having reference to jury trials in civil cases is as follows:

Art. 1, sec. 5. The right of trial by jury shall be inviolate. (Constitution of Ohio 1851).

Observe: This provision does not purport to *create* the right to a jury trial put to *preserve* it. It embodies the assumption that such right had existed and provides that as it existed, it shall be inviolate.

This provision of the constitution of 1802, sec. 8, art. 8, Bill of Rights, reads the same. Hence this right spoken of, whatever it

was, came along when the territory became the state of Ohio and hence it is not a creation of the constitution.

But on what principle, then, may juries be dispensed with in the greater number of our courts, courts of equity, courts of admiralty, courts martial, and justice's courts? Magna Charta declared that no man shall be deprived of life, liberty, or property but by the judgment of his peers *or* the law of the land.

Before the great charter juries were unknown in the courts I here have mentioned, courts of equity and the others, so their disuse therein had become part of the "law of the land". Therefor, though that charter was the first great instrument which guaranteed jury trial to Englishmen, yet it has never been supposed, that I know of, that that institution constituted any part of the machinery of those courts. In those courts a man could be deprived of life, liberty, or property by the law of the land, not by the judgment of his peers, *but* the alternative *or*, of that charter, by the law of the land, the power of these courts exercised without jury being so a part of the law of the land.

So cases triable by jury at common law in Ohio territory in place of triable by the law of the land, are still by the constitution secured in that right, but cases in these courts of equity and the others, not being jury trials at common law, and no right existing to try them by jury at common law, no right exists to be *preserved* inviolate by the constitution.

Besides, if this provision of the constitution should be thought to *create* the right to trial by jury, then that right must exist in every case in every court, for this provision makes no designations.

In Lessee of Cochran's Heirs v. Loring, 17 O. R. 409-425, after suggesting that the articles of compact prescribed in the ordinance of 1787 contained in substance this same provision in reference to jury trial, the learned Judge Hitchcock, fifty-seven years ago, speaking of this provision of the constitution that the right to trial by jury shall be *inviolate*, at p. 425 uses this language:

This description of laws have existed and been enforced, however, since 1795, and it seems to the court that it is now too late to question their validity, or rather constitutionality. The construction put upon the ordinance by counsel is too narrow. True, the right of trial by jury is guarded, but it could never have been intended that in every possible case it should have been enjoyed. Judicial proceedings according to the course of the common law, are secured, but this never could have been intended so to restrict

the future legislative power of the Territory or state, that chancery proceedings could not be authorized, or at any other proceedings necessary to the ends of justice.

This section 5, article 1, of the Ohio constitution of 1851 can therefore have no meaning except that the right existing then shall be inviolate but that no new right is created. If no right was intended to be created, then it must necessarily exist in every case for the lack of particular designation in the instrument, but we have seen that at least for the last one hundred and eighteen years, since 1787, the courts of Ohio territory and the state of Ohio have uniformly held that these same and similar provisions have meant what we here claim, so that this construction is the settled law in Ohio, and courts of equity with the due process provided by statute have been in operation all these years without the appendage of a jury.

Observe: The common law is in force in Ohio except so far as repealed or modified by legislative enactment, hence the law of the land by which equity cases are tried without a jury remains the same we have seen it has been for more than a century unless it has been changed by statute, but this has not been done in civil cases.

The legislature of Ohio has designated how issues are to be tried. Section 5130 Revised Statutes of Ohio reads:

Issues of law must be tried by the court, unless referred as hereinafter provided; and issues of fact arising in actions for the recovery of money only, or specific real or personal property, shall be tried by a jury, unless a jury trial be waived, or a reference be ordered as hereinafter provided.

Section 5204 indicates how jury may be waived in cases in which parties were entitled to it. This section reads:

In actions arising on contract the trial by jury may be waived by the parties, and in other actions with the assent of the court, in the following manner:

1. By the consent of the party appearing, when the other party fails to appear at the trial, by himself or attorney.
2. By written consent, in person or by attorney, filed with the clerk.
3. By oral consent in open court, entered on the journal.

As we have said, the right to a jury trial did not exist in this case; but if we are mistaken in this, the right has been waived. No demand was made for such trial; no objection was made to the trial court proceeding to try it, and it is too late on error in the supreme court of the state for the first time to complain that there should have been a jury trial. The supreme court of Ohio has always so held.

In Elithorpe v. Buck et al, 17 Ohio State, 72, decided by the supreme court in 1866, it is held, syl.:

1. In an action under the 557th section of the code, by a party claiming the legal title and possession of real property, to determine the interest of a party claiming an estate therein adverse to him, and to enjoin such party from committing irreparable injury to the property by cutting timber thereon—there being no issue of fact arising in the pleadings "for the recovery of money, or of specific real or personal property"—neither party has a right, under the 263d section of the code, to demand a trial by jury; but the issues are properly triable to the court, although the location of the boundary line between the adjoining lands of the respective parties is the matter in dispute.
2. When the defendant, in such action, takes issue with the plaintiff, and further claims, in his answer, that he is the legal owner and in possession of the land in dispute, and asks that his title thereto may be quieted; and where he suffers the case to be tried to the court without objection, until after the issues are found against him, he thereby waives any right he might have to a jury trial, and cannot object to a final decree in the case, because the issues are not found by a jury.

In Coal & Oil Co. v. Verner, 22 Ohio State 372, it is held, syl.:

1. In an action for the recovery of money wherein the only relief prayed for is a money judgment, either party is entitled to demand a trial by jury, notwithstanding numerous items of account, or of claim and counter-claim are involved in the issue.
2. In such action the defendant, though in default of answer, is entitled, under section 598 of the code, to demand a jury to assess damages. And if it be irregular in such case for the court to make an order (on the motion of the plaintiff and against the objection of the defendant), referring the cause to a referee for trial, and granting leave to defendant to answer generally, at a future day, such irregularity is cured if the defendant, after answer is filed, appear before the referee, and, without protest or

or objection to his jurisdiction, submit his case to him upon the issues and proofs.

In Culver v. Rodgers, 33 Ohio State 537, it is held, syl.:

In an action to enjoin actual and threatened trespasses to land by an adjoining proprietor—such as throwing down plaintiff's fences, closing up his road, erecting fences on plaintiff's land, etc., under a claim of right growing out of a dispute as to a line and a road between them—the defendant, by answer joined issue and asserted his rights in the premises, and the case was, without objection to the kind of relief sought, twice tried as a suit in equity; first, in the common pleas, and again on appeal to the district court upon an agreed statement of facts and the injunction was granted: *Held*, That it is now too late to object to the jurisdiction of the court to grant equitable relief, on the ground that the plaintiff had an adequate remedy at law, although such an objection might have been sustained if made by demurrer or answer, before hearing on the merits.

In Bonewitz v. Bonewitz, 50 Ohio State 373, it is held, syl.:

1. A party may waive his right to a jury trial by acts, as well as by words.
2. And where, in a case of which the court of common pleas, having jurisdiction of the parties, may also, by consent, acquire jurisdiction to try the cause without a jury, the record shows that the parties appeared, and neither demanded nor waived a jury, but without objection submitted the cause to the court upon the pleadings, evidence, and argument of counsel, it is not error for the court to proceed to final judgment in the case.
3. An objection by the defeated party, first made after such submission and judgment, that his cause was not tried to a jury, comes too late.

So that if this right existed in the cases at bar, though we claim it never did, it has been waived by Mr. Marvin in proceeding to trial to the court without objection.

Observe, besides: It cannot be claimed this action is one for a jury. No judgment for money is sought. In Binder v. Finkbone, 25 Ohio State, 103; and Trout v. Marvin, 62 Ohio State, 132, the supreme court of Ohio hold it is not an action to recover money but in the former to enforce a statutory lien, and in the latter an action to make a judgment at law a lien on real estate.

Observe: The common pleas court found in both cases for Mrs. Trout, as did the circuit court. Marvin *appealed* the cases to the

circuit court. If they were jury cases they are not appealable and the circuit court could get no jurisdiction except on error, but no error proceedings were prosecuted to that court. If the circuit court had no jurisdiction, the judgment of the common pleas is still valid and no error has ever been prosecuted to that.

It all shows that the complaint that the constitutions, either federal or state, in their guaranty of jury trial have been infringed, was never thought of until after both trial courts had found against Mr. Marvin, after he had without objection submitted the cases to the court for final hearing and determination. He refused to go upon the witness stand in the trial court, and with the proof in these records of his guilty knowledge, without his voice or any proof by him introduced to controvert any part of it, it is difficult to understand how he could have fared better to a jury than he has done to the court.

LASTLY.

These records show that this property had been occupied by Clifford and Gassman from 1888 or 1889 and used always for gambling purposes; that Marvin had his office on the same floor near enough that he could hear the chips used in their trade, and knew all about what they were doing. That in 1891 Mrs. Carlin sued Clifford and Gassman, alleging her husband lost there at gambling $15[illegible]0; that the case was settled for $3000, and Mr. Marvin signed the note with Clifford and Gassman which was given to settle it. On October 28, 1893, Mrs. Myers sued them for $1000 she claimed her husband lost there and made Marvin also a defendant. He demurred, and finally the defendants settled with her for $300. In 1891 James Clifford and Jacob Gassman, these tenants, were both indicted by the grand jury of Hancock county for keeping this place, and on plea of guilty were fined $100. All these matters then appeared in the town papers. Marvin knew Trout was gambling there and losing money, and yet withstood all the entreaties of Mrs. Trout to have it stopped and allowed the thing to go on. After all these things and much more contained in these records Marvin persistently, stoically, and defiantly stays off the stand, offers no word of explanation, but being rich, proceeds for ten long years to law these matters hoping to exhaust the little woman, and, not content when all the courts of his own state

have found and decreed against him, with evidently the same purpose in view, he places all these miles between her and the place of the sessions of this Honorable tribunal where she is now compelled to appear, with all the additional expense. We feel that it is a case in which under paragraph 2 of Rule 3 this court will award damages ten percent in addition to interest, and we urge this Honorable Court, in the name of justice, to so order.

Most respectfully submitted,

JOHN POE,

Attorney for Defendant in Error.

Supreme Court of the United States.

Nos. 19 and 20.—October Term, 1905.

William Marvin, Plaintiff in Error, vs. Belle B. Trout. } In error to the Supreme Court of the State of Ohio.

[November 13, 1905.]

The plaintiff in error in these cases seeks to review the judgments of the Supreme Court of Ohio, affirming judgments recovered against him by the defendant in error in one of the Circuit Courts of Ohio. The two cases involve the same question, which relates to the validity of the sections of the statute of the State of Ohio in regard to gambling, known as sections 4270, 4273 and 4275 of the Revised Statutes of that State. The sections are set forth in the margin.*

The defendant in error commenced these actions in the Court of Common Pleas of Hancock County, under section 4275, for the purpose of making certain judgments, recovered by her against other parties, a lien

*Sec. 4270. If any person, by playing at any game, or by means of any bet or wager, loses to any other person any sum of money or other thing of value, and pays or delivers the same, or any part thereof, to the winner, the person who so loses and pays, or delivers, may, at any time within six months next after such loss and payment or delivery, sue for and recover the money or thing of value so lost, and paid or delivered, or any part thereof, from the winner thereof, with costs of suit, by civil action founded on this chapter, before any court of competent jurisdiction.

"Sec. 4273. If the person losing such money or thing of value as provided in section forty-two hundred and seventy does not, within the time therein specified, without collusion or deceit, sue, and with effect prosecute, for the money or thing of value so lost and paid or delivered, any person may sue for and recover the same with costs of suit, against any winner as aforesaid, for the use of the person prosecuting the same.

"Sec. 4275. The property, both real and personal, of a defendant, against whom a judgment is rendered under this chapter, either for fines, costs or to recover money, or other thing of value, lost or paid, shall be liable therefor, without exemption, and such judgment shall be a lien thereon until paid; if the owner of the building in which the money was lost knowingly permits it to be used for gaming purposes, such building and the real estate upon which it stands shall be liable therefor in the same manner; and the guardian or trustee of a minor, insane person or idiot, who permits any property under his charge to be used for gaming purposes, and the same becomes liable on account thereof, shall be liable to his ward for the amount thereof."

on the property of the plaintiff in error to the extent of those judgments. The defendant demurred to the petition in each case. One of the grounds of demurrer was that the petition showed a former judgment in favor of defendant for the same cause of action. The demurrers were sustained, and judgments to that effect were affirmed on error by the Circuit Court, but the Supreme Court reversed them and remanded the cases for further proceedings. (62 Ohio St. 132.) The defendant then answered, and the cases went to trial in the Common Pleas, where plaintiff recovered judgments in her favor. On appeal in each case, to the Circuit Court of Hancock County, a trial was had *de novo*, which resulted in judgments in favor of plaintiff, (24 Ohio Circuit Court Rep. 333,) which were affirmed, without any opinion, by the Supreme Court of Ohio. (70 Ohio St. 437.) The defendant below has brought the cases here by writs of error.

The following are the facts upon which the questions arise: At the March Term, 1895, of the Court of Common Pleas for Hancock County, the defendant in error brought her action under the above section 4273, to recover from the defendants in that suit, who were named Clifford, Gassman and Marvin, (the last named being this plaintiff in error,) moneys alleged to have been lost by the plaintiff's husband in gambling, (and won by them,) between the 20th day of March, 1893, and the 19th day of March, 1894. She subsequently brought another action at the September Term, 1896, in the same Court of Common Pleas, against the same parties, to recover moneys alleged to have been so lost and won between March 19 and June 19, 1894. In the first action she recovered $3,473 and costs against all three defendants, and in the second she recovered $1,300 and costs against the same defendants. Those judgments were subsequently reversed on error, by the Circuit Court, as to Marvin, and affirmed as to the other defendants.

The plaintiff below then commenced these actions in the Court of Common Pleas of Hancock County against the defendant Marvin as the owner of the premises in which the gambling was carried on, to make the judgments theretofore obtained by her against Clifford and Gassman a lien upon the building of which Marvin, the defendant, was the owner, on the ground that he knowingly permitted the same to be used by them for gambling purposes. The petition in each case stated in substance the ownership by defendant Marvin of the property where the gambling was carried on; that Clifford and Gassman carried on gambling there in violation of law; that the defendant knowingly permitted his building to be so used. The petition then alleged the recovery of a judgment by plaintiff against the defendants Clifford, Gassman and Marvin, for the amount stated in the judgment; that the action was brought pursuant to section 4273 of the Revised Statutes of Ohio, to recover from the defendants

money staked and betted by plaintiff's husband, and the judgment recovered was for the amount found by the court to have been staked and betted by plaintiff's husband and won by the defendants; that the judgment was, on error, reversed as to Marvin, but affirmed as to the other defendants, and that the judgment remained in full force as to them and was wholly unpaid; that the said games of chance, "on which said money was staked and betted and lost" by plaintiff's husband, to the defendants Clifford and Gassman, were played at the rooms in defendant Marvin's building, and while defendant knowingly permitted the same to be used by them for such purpose. The prayer was to have the judgment declared a lien on the building, and that it be sold, etc.

The defendant in his answer in each case admitted the ownership of the premises at the times alleged in the petition, and also the recovery of the judgment as stated in the petition, and that such judgment as to the defendant Marvin was reversed, and the defendant denied the other allegations in the petition. He subsequently filed an amended answer setting up the Ohio statute of limitations. The cases were tried substantially as one case in the Common Pleas and resulted in judgments in favor of the plaintiff. Upon appeal to the Circuit Court a retrial of the case was had. (24 Ohio Circuit Rep., *supra.*) On that trial it was admitted that at the times mentioned in the petition the premises described therein were used for gambling purposes by Clifford and Gassman, "that they are the same premises in which the money described in judgment or represented by the judgments set up in the petition, are claimed to have been lost, but not admitting that plaintiff's husband, in fact, gambled with Clifford and Gassman between March 19, 1893, and June 20, 1894, it is admitted for the purposes of this action, that if he did, such gambling was done in the building and upon the premises of the defendant described in the petition." It was also conceded that the judgments were rendered against Clifford and Gassman, and that they occupied no other premises, and conducted no gambling during the periods specified in the petition except upon the premises described in the petition.

In the course of the trial the judgments against Clifford and Gassman were offered and received in evidence, under a general objection on the part of the defendant Marvin.

The plaintiff also proved, outside the record of the Clifford and Gassman judgments, by a witness called by her, the fact of the gambling and the amount lost and the place where it was lost. The witness having stated that he had lost the money to the full amount represented by the judgments, in gambling, was asked to state whether he had lost it at Clifford and Gassman's. This question was objected to at the very moment that the witness answered that he had, the objection being as follows: "Counsel on behalf of defendant Marvin objected to the above answer and moved the

court to strike out so much of the answer as relates to the fact and the extent of the loss, on the ground that it is not alleged in the petition and is not an issue of fact in the case. Which motion the court overruled, to which ruling of the court the defendant then and there excepted."

The witness then again stated, under this objection, that the moneys were lost at gaming in this building and were represented by these judgments, and that the moneys were lost as stated in the petition and at Clifford and Gassman's.

There was also evidence given on the trial tending to prove that the premises were not only used by Clifford and Gassman for gambling purposes during the times mentioned in the petition, but that such user was with the knowledge of the defendant Marvin, and that he knowingly permitted the same.

Upon the trial the defendant gave no evidence.

The Circuit Court, in giving judgment for the plaintiff, found these facts, and stated (24 Ohio Circuit Court Rep., *supra*) that in an action under section 4275, to subject the premises where the gaming was carried on and the money lost, to the payment of a judgment recovered against the winner, such judgment, when not impeached for fraud or collusion, was conclusive that the moneys lost and winnings secured, which caused the plaintiff's injury, were lost in gaming, and were won by the defendant in the judgment; that the same were won and lost in violation of law, and that the plaintiff in consequence thereof sustained damages to the amount of the judgment; that such judgments as to these facts are not open to dispute by the owner of the premises, in an action against him under that section.

The defendant Marvin then brought the cases by writs of error to the Supreme Court of the State for review, where they were affirmed, without any opinion, but some weeks after the mandate to the court below had been issued from the Supreme Court, that court, on motion of the plaintiff in error, ordered what is termed a "journal entry" to be made, as follows:

"Journal Entry.

"Whereupon, on motion of said plaintiff in error, William Marvin, the court order it to be certified and made part of the record of this case and of the judgment of affirmance heretofore entered herein, that this action is founded upon sections forty-two hundred and seventy-three (4273) and forty-two hundred and seventy-five (4275) of the Revised Statutes of Ohio on the subject of gaming.

"It is further certified that said plaintiff in error set up in his petition in error, asking the reversal of the judgment of the Circuit Court of Hancock County, Ohio, that said sections of said statutes and the proceedings of said Circuit Court had thereunder were repugnant to section one, article fourteen, of the amendments to the Constitution of the United States, and repugnant to article one, section nine, and article one, section ten, and section three of article three of said United States Constitution.

Also that said sections of said statutes and the proceedings had thereunder were claimed and set up by plaintiff in error to be an invasion of his private right of property in violation of said Constitution and amendments. That said judgment of affirmance was in favor of the validity of said statutes and of said proceedings had thereunder, and that they were not repugnant to any of the provisions of said Constitution or of the amendments thereto."

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The plaintiff in error seeks to reverse the judgments herein, based on the gaming statute of Ohio, because, s he insists, that statute is unconstitutional on several different ground : First, because it is (as he avers) an unconstitutiona' extension of the police power of the State, resulting in the taking of the property of the plaintiff in error for the benefit of the defendant in error, or, in other words, it results in the taking of the property of the plaintiff in error without his consent for a private purpose, and that it is an invasion of his private right of property, in violation of the Federal Constitution; second, because the statute denies or does not provide for an exercise of the right of trial by jury, and, therefore, a judgment founded upon it is obtained without due process of law; third, because the judgment first obtained against the persons who actually won the money is made conclusive evidence against the plaintiff in error, of the amount of money thus lost, although he was neither a party nor privy to that judgment, as it was reversed as to him, and he was thereupon dismissed from the case.

A reference to the record does not show that any one of these questions was raised, either by the pleadings or on the trial of the case. The only evidence that any question was raised in the Supreme Court, assailing the validity of the statute as a violation of any provision of the Federal Constitution, consists of a statement in the petition in error to the Supreme Court, that the statute was a violation of certain sections of the Federal Constitution, and in the certificate of the Supreme Court of Ohio, which that court ordered to be made a part of the record, and which is above set forth. It is a certificate from the court as distinguished from one by an individual judge.

The petition in error does not show that any question involving the Federal Constitution was actually argued or brought to the attention of the Supreme Court. It is well settled, in this court, that a certificate from a presiding judge of the State court, made after the decision of the case in that court, to the effect that a Federal question was considered and decided by the court, adversely to the plaintiff in error, cannot confer jurisdiction on this court, where the record does not otherwise show it to exist ; that the

effect of such a certificate is to make more certain and specific what is too general and indefinite in the record itself, but it is incompetent to originate the Federal question. (*Dibble* v. *Bellingham Bay Land Co.*, 163 U. S. 63; *Henkel* v. *Cincinnati*, 177 Id. 170; *Fullerton* v. *Texas*, 196 Id. 192.) As the certificate in the case at bar was made by the court, and was ordered by it to be attached to and form part of the record itself, it is perhaps sufficient to show that some questions of a Federal nature were before that court and decided by it. It is true the certificate is quite loose in its statement as to what was the nature or character of these questions. It is certified that the plaintiff in error contended that the sections of the statute and the proceedings of the Circuit Court had thereunder were repugnant to those sections of the Constitution of the United States referred to in the certificate. By reference to them it will be seen that section 1, article 14, contains several provisions quite distinct from, and having no relation to, each other, and the certificate does not state which one of the provisions of that section was claimed to have been violated by the statute in question. Section 9 of article 1 has itself seven subdivisions, and it would be difficult even to guess which particular provision the plaintiff in error claimed was violated by the statute. Section 10 of the same article is also referred to as having been violated by the statute; also article 3, section 3, which relates to the trial of all crimes by jury. Then there is stated to have been made by the plaintiff in error a general contention that the statute and proceedings thereunder were an invasion of his private right of property in violation of the Federal Constitution and its amendments.

A more general statement of the presentation of the Federal questions to a State court could scarcely be made. It is almost impossible to determine from such certificate what Federal question was decided in the case. We have heretofore held that an objection very similar to this raised no Federal question. (*Clarke* v. *McDade*, 165 U. S. 168.)

Assuming, however, that by reference to the first section of the Fourteenth Amendment, the question of the illegal extension of the police power of the State may be raised, under the claim that a judgment founded upon the statute would permit the taking of the property of the plaintiff in error without due process of law, we are of opinion that the objection is without merit. For a great many years past gambling has been very generally in this country regarded as a vice to be prevented and suppressed in the interest of the public morals and the public welfare. The power of the State to enact laws to suppress gambling cannot be doubted, and, as a means to that end, we have no doubt of its power to provide that the owner of the building in which gambling is conducted, who knowingly looks on and permits such gambling, can be made liable in his property which is thus used, to pay a judgment against those who won the money,

as is provided in the statute in question. That statute, or one somewhat similar to it, (without the conclusive feature of the judgment as evidence in the action to charge the property of the owner of the building where the gambling was carried on,) has been in force in Ohio ever since, at least, 1831, and similar legislation is found upon that subject or upon that of the regulation of the sale of liquor, in most of the States of the Union. The plain object of this legislation is to discourage, and, if possible, prevent gambling. The liability of the owner of the building to make good the loss sustained, under the circumstances set forth in the statute, was clearly part of the means resorted to by the legislature for the purpose of suppressing the evil in the interest of the public morals and welfare. We are aware of no provision in the Federal Constitution which prevents this kind of legislation in a State for such a purpose. To say that it must be limited to a provision allowing a recovery of the money by the one who lost it, would be in effect to hold invalid all legislation providing for proceedings in the nature of *qui tam* actions. Statutes providing for actions by a common informer, who himself had no interest whatever in the controversy other than that given by statute, have been in existence for hundreds of years in England, and in this country ever since the foundation of our Government. The right to recover the penalty or forfeiture granted by statute is frequently given to the first common informer who brings the action, although he has no interest in the matter whatever except as such informer. 3 Bl. Com. (Chap. 9) m. p. 161; 2 Id. (Chap. 29) m. p. 437; 2 Hawk. P. C. (8th ed.) 368; 1 Selwyn, Law of N. P. 621; *Dozier* v. *Williams*, 47 Miss. 605; *Beadleston* v. *Sprague*, (A. D. 1810,) 6 Johns. 101; *Caswell* v. *Allen*, 10 Johns. 118; *Parker* v. *Colcord*, (A. D. 1819,) 2 N. H. 363; *Pike* v. *Madbury*, (A. D. 1841,) 12 N. H. 262; *Commonwealth* v. *Churchill*, (A. D. 1849,) 5 Mass. 180.

Legislation giving an interest in the forfeiture to a common informer has been frequent in Congressional legislation relating to revenue cases. It is referred to in the act of March 3, 1797, (1 Stat. 506,) and cases arising under its provisions are to be found in 10 Wheat. 246, *United States* v. *Morris*, and 6 Pet. 404, *McLane* v. *United States*.

And in 1861, in 12 St. 292, 296, sec. 11, one moiety of the forfeiture is given "to him who shall first sue for the same."

There can be no doubt of the right of the Government to give the whole instead of a moiety of the forfeiture to the informer.

Second. The contention on the part of the plaintiff in error, that the statute violates the Federal Constitution, because it does not provide for or permit trial by jury, is equally without merit. (*Maxwell* v. *Dow*, 176 U. S. 581.)

Third. The contention that the statute violates the first section of the Fourteenth Amendment, because under it, as is averred, a judgment against

those who won the money at gambling, when not impeached for fraud or collusion, is conclusive evidence of the amount lost in an action against the owner of the property where the money was lost, who was neither party nor privy to such judgment, cannot in the state of this record be here raised. Upon the trial the defendant in error offered the judgment against Clifford and Gassman in evidence, and it was received under a general objection made by the plaintiff in error. By reference to the record it appears that the plaintiff in error on the trial conceded that the judgment was rendered against Clifford and Gassman. The formal putting in evidence of a judgment, the existence of which was conceded, can raise no question whatever. At a subsequent stage of the trial oral evidence was given outside of the record of the judgments, (under objection by the plaintiff in error that there was no such issue in the case,) of the amount of money that was in fact lost at play, and that it was represented by and was as large as the amount stated in the judgment offered in evidence.

One of the grounds of objection to the evidence, made by the plaintiff in error, was that neither the fact nor the extent of the loss was alleged in the petition or was an issue in the case. The petition in substance contained both averments and the answer denied them. There was such an issue, although defendant in his objection overlooked it. The objection was overruled and the evidence given. It surely cannot now be pretended that the plaintiff in error was thereby harmed. Can he now be heard to say that the statute is void because of the conclusive character which he avers is therein given to the judgment, when there was proof outside the record (given against his own objection and averment that the fact was not in issue) showing the amount of money lost? If the statute do mean that such prior judgment is conclusive, what legal interest has the plaintiff in error in the question when there is other evidence in his case, although given against his objection, that there was no issue on that fact? The whole statute is not void, even if it mean that the judgment is conclusive, and when other evidence is given the (alleged) invalid provision is eliminated in such case, and the party who insists there is no issue as to loss, not being harmed, cannot raise the question. (*Supervisors* v. *Stanley*, 105 U. S. 305, 311; *Clark* v. *Kansas City*, 176 Id. 114, 118.) The statement of the Circuit Court as to the conclusive character of a judgment was, as applied to the plaintiff in error, a mere abstraction. It does not appear even by the certificate of the Supreme Court that the plaintiff in error claimed the protection of the first section of the Fourteenth Amendment, on the ground of the alleged erroneous decision of the court below on this question, nor does it appear that the Supreme Court itself gave any opinion upon or determined it. These facts must appear in the record. (*Dewey* v. *Des Moines*, 173 U. S. 193, 197; *Chapin* v. *Fye*, 179 Id. 127.) The certificate that the plaintiff in error claimed the protection of that

section is fully satisfied by treating it as raising the question of the invalidity of the statute on the ground of an illegal extension of the police power, and also because it did not permit a trial by jury, and thereby, as contended, denying due process of law. These grounds we have already considered. We cannot and ought not to assume that the Supreme Court, in this state of the record, took cognizance of the question of the conclusiveness of the judgment, and the certificate does not show that the court did so.

In what has been said we do not wish it to be understood that this court intimates an opinion upon the alleged invalidity of the statute upon the above ground. We simply say that the plaintiff in error cannot raise that question.

The judgments of the Supreme Court of Ohio are

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.